**The Ontario Securities Commission**

# OSC Bulletin

July 13, 2007

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

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# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**JULY 13, 2007**

**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
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**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| July 17, 2007<br>10:00 a.m. | **Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy**<br>s. 127(1) & (5)<br>Sean Horgan in attendance for Staff<br>Panel: TBA |
| July 17, 2007<br>2:00 p.m. | **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**<br>s.127 and 127.1<br>D. Ferris in attendance for Staff<br>Panel: TBA |
| July 20, 2007<br>10:00 a.m. | **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**<br>s. 127<br>M. MacKewn in attendance for Staff<br>Panel: TBA |
| July 30, 2007<br>11:00 a.m. | **Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney**<br>s. 127 and 127.1<br>J. Superina in attendance for Staff<br>Panel: RLS/DLK/ST |

| | |
|---|---|
| August 7, 2007<br>10:00 a.m. | **Land Banc of Canada Inc., LBC Midland I Corporation, Fresno Securities Inc., Richard Jason Dolan, Marco Lorenti and Stephen Zeff Freedman**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: PJL/ST |
| September 6, 2007<br>10:00 a.m. | **Jose Castaneda**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: WSW/DLK |
| September 10, 2007<br>10:00 a.m. | ***AiT Advanced Information Technologies Corporation, *Bernard Jude Ashe and Deborah Weinstein**<br><br>s. 127<br><br>K. Manarin in attendance for Staff<br><br>Panel: WSW/HPH/CSP<br><br>* Settlement Agreements approved February 26, 2007 |
| September 17, 2007<br>10:00 a.m. | **Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas**<br><br>s.127<br><br>P. Foy in attendance for Staff<br><br>Panel: WSW/DLK |
| September 28, 2007<br>10:00 a.m. | **Jason Wong, David Watson, Nathan Rogers, Amy Giles, John sparrow, Kervin Findlay, Leasesmart, Inc., Advanced Growing Systems, Inc., Pharm Control Ltd., The Bighub.com, Inc., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, Nutrione Corporation and Select American Transfer Co.**<br><br>s. 127 and 127.1<br><br>P. Foy in attendance for Staff<br><br>Panel: JEAT/ST |
| September 28, 2007<br>10:00 a.m. | **Stanton De Freitas**<br><br>s. 127 and 127.1<br><br>P. Foy in attendance for Staff<br><br>Panel: JEAT/ST |
| October 9, 2007<br>10:00 a.m. | **John Daubney and Cheryl Littler**<br><br>s. 127 and 127.1<br><br>A.Clark in attendance for Staff<br><br>Panel: TBA |
| October 9, 2007<br>10:00 a.m. | ***Philip Services Corp. and Robert Waxman**<br><br>s. 127<br><br>K. Manarin/M. Adams in attendance for Staff<br><br>Panel: TBA<br><br>Colin Soule settled November 25, 2005<br><br>Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey and John Woodcroft settled March 3, 2006<br><br>* Notice of Withdrawal issued April 26, 2007 |
| October 12, 2007<br>10:00 a.m. | **Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| October 22, 2007<br>10:00 a.m. | **Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |

| | |
|---|---|
| October 29, 2007<br>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**<br>S. 127<br>A. Sonnen in attendance for Staff<br>Panel: TBA |
| November 12, 2007<br>10:00 a.m. | **Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson**<br>s.127<br>J. Superina in attendance for Staff<br>Panel: TBA |
| December 10, 2007<br>10:00 a.m. | **Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans**<br>s. 127 & 127(1)<br>H. Craig in attendance for Staff<br>Panel: TBA |
| April 2, 2008<br>10:00 a.m. | **Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.**<br>s. 127 and 127.1<br>Y. Chisholm in attendance for Staff<br>Panel: TBA |
| TBA | **Yama Abdullah Yaqeen**<br>s. 8(2)<br>J. Superina in attendance for Staff<br>Panel: TBA |
| TBA | **John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir**<br>S. 127 & 127.1<br>I. Smith in attendance for Staff<br>Panel: TBA |
| TBA | **Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**<br>s. 127<br>J. Waechter in attendance for Staff<br>Panel: TBA |
| TBA | **First Global Ventures, S.A., Allen Grossman and Alan Marsh Shuman**<br>s. 127<br>D. Ferris in attendance for Staff<br>Panel: WSW/ST/MCH |
| TBA | **Frank Dunn, Douglas Beatty, Michael Gollogly**<br>s.127<br>K. Daniels in attendance for Staff<br>Panel: TBA |
| TBA | **Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels**<br>s. 127 and 127.1<br>D. Ferris in attendance for Staff<br>Panel: TBA |
| TBA | **Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries**<br>s. 127 & 127.1<br>P. Foy in attendance for Staff<br>Panel: WSW/MCH |

**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**

**Andrew Stuart Netherwood Rankin**

**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**

**Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow**

**Euston Capital Corporation and George Schwartz**

**1.2 Notices of Hearing**

**1.2.1 FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun - s. 127**

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

**- AND -**

**IN THE MATTER OF**
**FACTORCORP INC.,**
**FACTORCORP FINANCIAL INC., AND**
**MARK TWERDUN**

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

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario on Friday, July 20, 2007 at 10:00 a.m., or as soon thereafter as the hearing can be held:

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

(a) pursuant to s. 127(7), to extend the temporary order made on July 6, 2007 until the final disposition of this matter or until the Commission considers appropriate; and

(b) to make such other order as the Commission considers appropriate.

**BY REASON OF** the allegations of Staff that the above named appear to have participated in or acquiesced to an illegal distribution of FactorCorp Financial Inc. debentures to Ontario investors contrary to section 53 of the Act and without appropriate registration, contrary to section 25 of the Act and such additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 6th day of July, 2007

"John Stevenson"
Secretary to the Commission

## 1.4 Notices from the Office of the Secretary

### 1.4.1 Factorcorp Inc., Factorcorp Financial Inc. and Mark Twerdun

**FOR IMMEDIATE RELEASE**
**July 10, 2007**

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

**- AND -**

**IN THE MATTER OF**
**FACTORCORP INC.,**
**FACTORCORP FINANCIAL INC., AND**
**MARK TWERDUN**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing on July 6, 2007 setting the matter down to be heard on July 20, 2007 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Temporary Order and Notice of Hearing are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Manager, Public Affairs
416-595-8913

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

### 1.4.2 Thomas Vincent Hinke

**FOR IMMEDIATE RELEASE**
**July 10, 2007**

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

**- AND -**

**IN THE MATTER OF**
**THOMAS VINCENT HINKE**

**TORONTO** – Following a hearing on the merits held on February 14, 2007, and a hearing on sanctions held on February 28, 2007, the Commission issued its Reasons and Decision in the above noted matter today.

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

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### 1.4.3 The Juniper Fund Management Corporation et al.

**FOR IMMEDIATE RELEASE**
**July 10, 2007**

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

**- AND -**

**IN THE MATTER OF**
**THE JUNIPER FUND MANAGEMENT CORPORATION,**
**JUNIPER INCOME FUND,**
**JUNIPER EQUITY GROWTH FUND AND**
**ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)**

**TORONTO** – Staff of the Commission filed an Amended Statement of Allegations dated July 5, 2007 in the above matter.

A copy of the Amended Statement of Allegations dated July 5, 2007 is available at **www.osc.gov.on.ca**.

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

**AND**

**IN THE MATTER OF**
**THE JUNIPER FUND MANAGEMENT CORPORATION,**
**JUNIPER INCOME FUND,**
**JUNIPER EQUITY GROWTH FUND AND**
**ROY BROWN (A.K.A. ROY BROWN-RODRIGUES)**

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

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

**BACKGROUND**

**THE PARTIES**

1. The Juniper Fund Management Corporation ("JFM") is the fund manager, trustee and fund administrator of both the Juniper Equity Growth Fund ("JEGF") and the Juniper Income Fund ("JIF"). JEGF and JIF are collectively referred to as the "Funds". JFM is not registered in any capacity with the Commission but is a market participant by virtue of being a manager of assets of a mutual fund.

2. JEGF is a mutual fund trust established on November 15, 1985. According to its simplified prospectus dated July 5, 2005, JEGF invests in equity and equity-related securities of companies listed on Canadian and foreign stock exchanges.

3. Effective October 7, 2005, JEGF merged with the Capstone Balanced Fund, the Capstone Canadian Equity Fund and the Capstone Global Equity Fund (the "Merged Capstone Funds"). Unitholders of the Merged Capstone Funds received units in JEGF equivalent in value to their holdings in the Merged Capstone Funds. Total net assets of JEGF were approximately $12.3 million as at February 26, 2006.

4. JIF was formerly the Capstone Cash Management Fund, a Canadian money market fund organized as a mutual fund trust. The Capstone Cash Management Fund was renamed JIF and its investment objectives were changed to an income fund. Total net assets of JIF were approximately $350,000 as of February 26, 2006.

5. Until the appointment of Grant Thornton Limited ("Grant Thornton") on May 18, 2006, Roy Brown ("Brown") was a director of JFM. Brown is also president, chief executive officer and sole shareholder of JFM and is also known as Roy Brown-Rodrigues. Brown was registered as an officer and director of Polysecurities Inc., a limited market dealer from March 2003 until December 2005.

6. Marnie Brown is the spouse of Brown.

7. Grant Thornton is the Receiver of all the assets, undertakings and properties of JFM, JEGF and JIF. Grant Thornton was appointed Receiver by Order of the Ontario Superior Court of Justice (Commercial List) on May 18, 2006.

8. NBCN Inc. ("NBCN") is the custodian of assets for the Funds. NBCN is registered with the Commission as a broker and investment dealer. JFM also has two margin accounts with NBCN.

9. National Bank Financial Ltd. ("NBFL") operates one margin account in the name of Brown. NBFL is registered with the Commission as an investment dealer.

10. RBC Dominion Securities Inc. ("RBCDS") operated a margin account in the name of Brown from approximately 2000 to November 2005. In November 2005, the RBCDS margin account was closed and the account transferred to NBFL.

11. PolySecurities Asset Management Corp. ("PAM") is a private company whose series B preference shares are portfolio assets of JEGF.

**FOCUSED COMPLIANCE REVIEW**

12. Staff of the Compliance Section of the Capital Markets Branch ("Compliance Staff") conducted a focused compliance review of JFM on December 13 to 15, 2005 at JFM's office located in Oakville, Ontario.

13. The compliance review focused on the following areas:

(a) verifying the existence and quality of assets in the Funds;

(b) the Funds' ability to meet investor redemptions within three business days after the pricing date for the securities (T+ 3 days);

(c) the financial condition of the Funds;

(d) the appropriateness of portfolio assets given the investment objectives set out in the Funds' prospectuses; and

(e) the appropriateness of JEGF's investment in PAM.

14. The results of the focused compliance review indicated that:

(a) the portfolio securities of the Funds were of good quality (liquid and "blue chip") except for PAM;

(b) purchases in the Funds were almost nil, except for large purchases by JFM and related parties and some small monthly purchases by retail clients;

(c) the Funds were taken off FundSERV in or about November 2005 and no active marketing of the Funds was taking place;

(d) unreconciled portfolio security positions and unreconciled cash balances in the Funds totalled $1.2 million or about 9% of the Funds' assets;

(e) approximately $1.4 million or 11% of JEGF's net assets (including the investment in PAM) were offside with JEGF's investment objectives;

(f) JEGF's investment in PAM appeared to contravene subsection 111(3) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") which prohibits mutual funds from knowingly holding an investment in an issuer in which an officer or director of the mutual fund's management company has a significant interest;

(g) potential net asset value ("NAV") errors existed for the Funds due to unreconciled assets, mispriced portfolio securities and the failure to record liabilities on a timely basis;

(h) inadequate books and records were maintained as evidenced by no bank reconciliations, no portfolio security reconciliations and incomplete trade and unitholder records; and

(i) JFM acting as a mutual fund dealer without registration, as unitholders could buy and redeem units in the Funds directly with JFM.

15. As a result of the focused compliance review, Brown and JFM were asked by Compliance Staff to address the following four key deficiencies:

(a) unreconciled differences in the Funds' portfolio security positions between custodial records and JFM's records;

(b) unreconciled differences in the Funds' cash balances between custodial and bank records and JFM's records;

(c) $1.4 million in investments inconsistent with JEGF's prospectus; and

(d) JEGF's investment in PAM.

16. JFM delivered an action plan dated December 23, 2005 to address the key deficiencies listed above.

17. In January 2006, Staff and JFM exchanged correspondence and held discussions with Brown and his

counsel aimed at resolving each of the four key deficiencies and other deficiencies.

18. As a result of the focused compliance review and further inquiries and discussions with Brown and his counsel, Staff became concerned that the Funds' NAVs were materially incorrect due to the inaccuracy and incompleteness of the Funds' assets, liabilities and units outstanding.

19. On or about March 14, 2006, Staff provided a Compliance Field Review Report to JFM and its counsel. The Compliance Field Review Report identified significant deficiencies including: (a) fund governance; (b) fund accounting; (c) unsuitable and prohibited investments; (d) inadequate books and records; (e) concerns that JFM was acting as a mutual fund dealer without registration; (f) inaccuracies and inconsistencies with JEGF's simplified prospectus; (g) misleading statements on Juniper's website and press releases; (h) examples of trades not settled within three business days; (i) a potential conflict of interest by the Funds' auditor; and (j) inadequate written policies and procedures.

**JFM'S AND BROWN'S MARGIN ACCOUNTS**

20. Brown is a client of NBFL and has a margin account 116KRZ-E ("Brown's NBFL Account") which was opened with NBFL in or about November 2005. Brown had a RBCDS margin account 537-06532-2-7 ("Brown's RBCDS Account") which was closed and the account transferred to Brown's NBFL Account. Brown had approximately 120,000 JEGF units in Brown's NBFL Account and an outstanding debit balance of approximately $350,000 as of March 15, 2006.

21. JFM has a margin account 27R001E with NBCN which was opened in or about March 2005 ("JFM's NBCN Account"). JFM had approximately 600,000 JEGF units in JFM's NBCN Account and had an outstanding debit balance of approximately $1.8 million as of March 15, 2006.

22. Staff allege that JFM and/or Brown has/have misrepresented its/his/their ownership interests in JEGF units to RBCDS, NBCN, NBFL, Compliance Staff and Staff of the Enforcement Branch.

23. Staff allege that the number of JEGF units owned by JFM and Brown as shown on the account statements for JFM's NBCN Account and Brown's NBFL Account was inconsistent with the unitholder information as at December 31, 2005 and January 25, 2006 provided by JFM and Brown to Compliance Staff.

24. Staff allege that JFM and/or Brown improperly issued, pledged or redeemed JEGF units in the names of JFM and/or Brown to the prejudice of RBCDS, NBCN, NBFL, JEGF and the other JEGF unitholders.

**RECEIVERSHIP OF JFM, JEGF AND JIF**

25. On May 18, 2006, Grant Thornton was appointed Receiver of all the assets, undertakings and properties of JFM and the Funds.

26. The Receivership Order was sought as: (a) Staff were unable to identify where $3 million in funds for the purchase of JEGF units were either deposited to or, if deposited, where the funds were withdrawn and deposited to; (b) Staff had received information that Brown and JFM had approximately 700,000 JEGF units in JFM's NBCN Account and in Brown's NBFL Account which information was inconsistent with the list of JEGF unitholders provided to Staff; and (c) major deficiencies in JFM's operation were identified in Staff's Compliance Report dated March 14, 2006.

27. The Receivership is ongoing and four receiver reports approving the conduct of the Receiver have been filed with the Court.

**OFF-BOOK PURCHASES OF JEGF UNITS**

28. From February to May 2005 inclusive, Brown and JFM made four purchases totalling $4,450,000 of JEGF units on margin through RBCDS and NBCN and kept the proceeds for his/its/their own use and did not ensure that the purchase monies were paid to JEGF.

29. On February 7, 2005, Brown purchased 143,143.706 JEGF units for $900,000 in Brown's RBCDS Account. The RBCDS cheque in the amount of $900,000 was deposited into JEGF's Bank of Montreal account 1029-480 which account was not included in JEGF's accounting records.

30. On March 1, 2005, Brown purchased 220,025.46 JEGF units for $1,400,000 through Brown's RBCDS Account. RBCDS settled the purchase through a wire transfer to JEGF's BMO account 1029-499 which was an account listed on JEGF's accounting records. On March 8, 2005, $1,400,000 was wired out immediately to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

31. On March 11, 2005, Brown purchased 110,733.212 JEGF units for $700,000 through JFM's NBCN Account. At the request of Brown, a manual cheque in the amount of $700,000 payable to JEGF was provided to JFM. The NBCN cheque in the amount of $700,000 was deposited to JEGF's CIBC account 68-04519 which account was not included in JEGF's accounting records.

32. On May 19, 2005, Brown purchased 220,503.0073 JEGF units through JFM's NBCN Account. On the instructions of Brown, NBCN wire transferred $1,450,000 to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

33. The JEGF units which were the subject of the off-book purchases discussed in paragraphs 28 to 32 above were: (i) not recorded in JEGF's books and records

maintained by JFM and provided to Staff; (ii) not recorded in JEGF's daily NAV calculations; and/or (iii) not deposited and retained in JEGF's NCBN custodial account 27R000E ("JEGF's Custodial Account"). As a result, the Receiver initially concluded that the JEGF units that were transferred to Brown's NBFL Account from Brown's RBCDS Account or purchased in JFM's NBCN Account were not valid JEGF units.

34. Staff further allege that Brown and JFM's failure to deposit the funds from the off-book purchases of JEGF units to JEGF's trust accont was conduct contrary to section 11.1 of National Instrument 81-102 ("NI 81-102") and contrary to subsection 116(1) of the Act.

**TWO SETS OF UNITHOLDER RECORDS**

35. In early February 2007, Staff became aware that Felcom Data Services Inc. ("Felcom") was the transfer agent for JEGF from approximately July 2005 to November 2005 inclusive. Felcom's unitholder list for JEGF differed from JFM's unitholder list by approximately 612,000 to 697,000 JEGF units for the period of August 2005 to the Capstone merger in October 2005.

36. Staff allege that Brown and JFM maintained two sets of records for JEGF in order to: (a) mislead RBCDS and NBCN as to the balance of JEGF units held in Browns' RBCDS Account and in JFM's NBCN Account; and (b) redeem units "acquired" in the off-book purchases set out in paragraphs 29 to 32 above.

**REDEMPTIONS BY BROWN AND RELATED PARTIES OF JEGF UNITS NOT OWNED OR PAID FOR PRIOR TO THE REDEMPTIONS**

37. Staff have identified numerous examples of Brown and related parties redeeming JEGF units prior to the payment of these JEFG units. In most cases, the redemptions were eventually paid by the related parties. Examples of redemptions by Brown or related parties of JEGF units not owned or paid for prior to the redemptions include:

a. the redemption of 71, 179.782 JEGF units by Windrush Abbey Leasing Limited ("Windrush") on February 2, 2005;

b. the redemption of 69,767.4419 JEGF units by JFM on May 26, 2005;

c. the redemption of 38,762.7907 JEGF units by JFM on May 26, 2005;

d. the redemption of 70,631.23 JEGF units by Brown on June 15, 2005; and

e. the redemption of 13,007.5783 JEGF units by Brown on October 30, 2005.

38. JFM's and Brown's conduct in redeeming JEGF units not yet paid for was a breach of section 9.4 of NI 81-102 which requires mutual funds to be paid for purchases of the securities of the mutual fund within three business days of the purchase failing which the purchase order is to be redeemed.

39. Staff allege that the redemptions of JEGF units by Brown and related parties amounted to interest-free loans to JFM from the JEGF unitholders. Staff allege that JFM's and Brown's conduct was a breach of their fiduciary duty to JEGF and the JEGF unitholders and a breach of their statutory duty of care owed to JEGF pursuant to subsection 116(1) of the Act.

**PLEDGING OF JEGF UNITS TO NBCN**

40. JFM made two in-kind transfers of JEGF units to NBCN in circumstances in which those JEGF units had not been recorded on JEGF's books and records as maintained by JFM.

**Transfer of 171,430 JEGF Units to JFM's NBCN Account**

41. On September 12, 2005, JFM provided authorization to NBCN to transfer 171,430 JEGF units from JEGF000-0014 to JFM's NBCN Account. Brown was the registered account holder of JEGF000-0014.

42. Staff allege that these JEGF units which were pledged by Brown were obtained from his off-book purchases of JEGF units described in paragraphs 30 and 31 above.

43. On September 23, 2005, Brown then withdrew $498,000 from JFM's NBCN Account and the monies were ultimately used to purchase JEGF units for Brown.

**Transfer of 246,964 JEGF Units to JFM's NBCN Account**

44. On November 29, 2005, Brown faxed a transfer order confirmation to NBCN which confirmed the transfer of 246,964 JEGF units to JFM's NBCN Account from JEGF fund account JEGF 000-0012. JFM was the registered account holder of JEGF000-0012.

45. On November 30, 2005, Brown confirmed by e-mail to NBCN that 246,964 JEGF units should have been transferred to JFM's NBCN Account because NBCN had mistakenly recorded the transfer as 246.964 JEGF units.

46. Staff allege that neither Brown nor JFM owned the 246,964 JEGF units which were pledged to NBCN.

47. Staff allege that Brown used the margin available from this transfer of JEGF units for his own benefit including: (a) a payment to Brown's and Marnie Brown's line of credit; and (b) purchase of JEGF units in the names of JFM and Southgate Investment Trust ("Southgate").

**IMPROPER USE OF JEGF's ASSETS**

48. In or about February 2005, Brown turned JEGF's Custodial Account from a cash account to a margin account.

49. Mutual funds are prohibited by section 2.6 of NI 81-102 from borrowing cash or providing a security interest over portfolio assets unless: (a) the transaction is a temporary measure to accommodate redemption requests and the outstanding amount of all borrowing does not exceed five percent of the net assets of the mutual fund; or (b) otherwise permitted by NI 81-102.

50. On March 24 and 29, 2005, Brown/JFM withdrew $1,248,000 and $703,143.57 by drawing on the margin available in JEGF's Custodial Account. These monies were used to purchase JEGF units in the names of Brown and JFM on March 31, 2005 and $122,000 was deposited to a CIBC bank account in the name of the Juniper Pooled Income and Property Fund. Most of these JEGF units were redeemed by Brown and the proceeds used to purchase Brown's matrimonial home, provide additional margin for the off-book purchase of JEGF units referred to in paragraph 32 and to repay the margin on JEGF's Custodial Account.

51. Other examples of a misuse of JEGF's Custodial Account include:

(a) on September 27, 2005, JFM withdrew $248,211.00 as partial payment for the purchase of the Merged Capstone Funds; and

(b) on November 16, 2005, JFM withdrew $637,000 for the purchase of JEGF units for Marnie Brown and JFM.

52. Staff allege that the borrowing within JEGF's Custodial Account as set out in paragraphs 50 and 51 is contrary to section 2.6 of NI 81-102, a breach of JFM's and Brown' statutory duty of care owed by Brown and JFM pursuant to subsection 116(1) of the Act.

53. Staff allege that JFM and Brown failed to maintain all custodial assets with one custodian contrary to subsection 6.1(1) of NI 81-102 and acted as custodian of JEGF assets including cash, GICs and preference shares of PAM contrary to subsection 6.1(6) of NI 81-102.

54. Brown further failed to include the purchase and redemption of JEGF units in JEGF's NAV calculation contrary to section 14.4 of National Instrument 81-106 ("NI 81-106").

**MISLEADING STAFF OF THE COMMISSION**

55. Compliance Staff conducted a voluntary interview of Brown during its focused compliance review from December 13 to 15, 2005 and Staff of the Enforcement Branch conducted a voluntary interview of Brown on April 18, 25, 26 and May 2, 2006. During these interviews, Brown misled Staff concerning the following:

a. that any discrepancy in the number of JEGF units in JFM's NBCN Account and Brown's NBFL Account was due to problems with the JFM's record keeping system;

b. the existence of units of Juniper Equity Growth (Private Class Series) Fund;

c. the relationship between Brown and Windrush;

d. the relationship between Brown and PAM;

e. the relationship between Brown and Southgate and/or Southgate Trust;

f. Brown failed to identify all of JEGF's and JFM's bank accounts and advised Staff that all such past and present bank accounts had been identified;

g. the role of Felcom as JFM's transfer agent and the services provided to JFM by Felcom;

h. the number of JEGF units transferred in-kind to NBCN; and

i. the transfers of JEGF units to Stonewall Landscape Ltd. and D-Tech Consulting.

**CONDUCT CONTRARY TO THE PUBLIC INTEREST**

56. Staff allege that Brown's and JFM's off-book purchases of JEGF units and the subsequent pledging of JEGF units to NBCN and/or NBFL including the keeping of two sets of JEGF unitholder records was conduct contrary to the record-keeping requirements in subsection 19(1) of the Act and section 18.1 of NI 81-102 and contrary to the public interest.

57. Staff allege that the redemptions of units not owned or paid for at the time by JFM and/or Brown was conduct contrary to subsection 9.4 of NI 81-102 and contrary to the public interest.

58. Staff allege that JFM's and Brown's use of JEGF's Custodial Account was contrary to section 2.6 of NI 81-102 and contrary to the public interest.

59. Staff allege that JFM and/or Brown has/have improperly permitted JEGF to guarantee JFM's outstanding cash balances in accounts including JFM's Margin Account and JFM's NBCN account 27R005E contrary to section 112 of the Act and section 2.6 of NI 81-102.

60. Staff allege that JEGF provided prohibited loans to JFM contrary to subsection 111(1)(a) and section 112 of the Act and contrary to the public interest.

61. Staff allege that JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

62. Staff allege that JFM and Brown did not exercise its powers and discharge their duties honestly, in good faith and in the best interests of the Funds and did not exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to subsection 116(1) of the Act and contrary to the public interest. JFM and Brown breached their statutory duty of care to the Funds by: (i) failing to ensure that the proceeds from the sale of units were paid to JEGF; (ii) maintaining two sets of unitholder records for JEGF; (iii) redeeming JEGF units which had not yet been paid for; (iv) making in-kind transfer of JEGF units which units had not been recorded on JEGF's books and records maintained by JFM; (v) improperly issuing or transferring JEGF units in the names of JFM and Brown which were not properly issued JEGF units or which were not owned by either JFM or Brown; (vi) borrowing amounts secured by JEGF's Custodial Account; (vii) failing to have complete supporting records of unitholders and their trades; (viii) failing to prepare accurate NAV calculations for the Funds which resulted in material NAV errors; (ix) failing to keep proper books and records contrary to subsection 19(1) of the Act; (x) failing to have an adequate process for the pricing of the Funds' portfolio securities; and (xi) failing to ensure that the Funds' portfolio holdings complied with the fundamental investment objectives of the Funds and with Ontario securities law.

63. Staff allege that JFM failed to maintain accurate records of the unitholders and the units held by each unitholder contrary to section 18.1 of NI 81-102 and subsection 19(1) of the Act and contrary to the public interest.

64. Staff allege that material NAV errors for the Funds have resulted from JFM's and Brown's failure to put in place an adequate process and a system of controls for the calculation of the Funds' NAV.

65. Staff allege that JEGF's investment of $400,000 in preferred shares of PAM is contrary to subsections 111(2)(c)(ii) and 111(3) of the Act and contrary to the public interest. After its merger, JEGF held securities that were inconsistent with its fundamental investment objectives contrary to the public interest.

66. Staff allege that JFM has acted as custodian or sub-custodian of assets of JEGF in the investment in PAM, cash and GICs of JEGF were not properly held with the custodian of JEGF contrary to subsection 6.1(1) of NI 81-102.

67. Staff allege that JEGF's simplified prospectus, information circular and annual information form contained misleading or untrue statements contrary to subsections 56(1) and/or 122(1) of the Act and contrary to the public interest.

68. Staff allege that the Funds' website at www.juniperfund.ca and press releases contained untrue or misleading sales communications contrary to subsection 15.2(1) of NI 81-102 and contrary to the public interest.

69. Staff allege that Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111(1)(a), 111(2)(c)(ii), 111(3), 112, 116(1) and 122(1) of the Act and in breaches of subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102 and subsections 14.2(1) and 14.4 of NI 81-106 and in doing so has acted contrary to section 129.2 of the Act and engaged in a conduct contrary to the public interest.

70. Staff allege that Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in a misrepresentation of JFM's and/or Brown's ownership interest in JEGF units and in the issuance, pledging and redemption of JEGF units to JFM and/or Brown and in so doing has prejudiced other JEGF unitholders, JEGF, RBCDS, NBCN and NBFL and engaged in conduct contrary to the public interest.

71. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 5th day of July, 2007

### 1.4.4 Norshield Asset Management (Canada) Ltd. et al.

**FOR IMMEDIATE RELEASE**
**July 10, 2007**

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

**- AND -**

**IN THE MATTER OF**
**NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,**
**OLYMPUS UNITED GROUP INC.,**
**JOHN XANTHOUDAKIS,**
**DALE SMITH AND**
**PETER KEFALAS**

**TORONTO** – Following a hearing on July 5, 2007 the Commission issued an order that the next appearance with respect to this matter shall take place on September 17, 2007 at 10:00 a.m. at the offices of the Commission.

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
& Public Affairs
416-593-8120

Laurie GIllett
Manager, Public Affairs
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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 Liquor Barn Income Fund - s. 1(10)

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

**Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(10).

July 4, 2007

**Burnet, Duckworth & Palmer LLP**
1400, 350 - 7 Avenue SW
Calgary, AB T2P 3N9

**Attention: Scott D. Kearl**

Dear Sir:

**Re: Liquor Barn Income Fund (the Applicant) - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador (the Jurisdictions)**

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

As the Applicant has represented to the Decision Makers that:

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

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

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

Relief requested granted on the 4th day of July, 2007.

"Agnes Lau, CA"
Associate Director, Corporate Finance
Alberta Securities Commission

### 2.1.2 Charter Realty Holdings Ltd. - s. 1(10)b

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

**Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)b.

July 5, 2007

**Goodmans LLP**
250 Yonge St, Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Brad Ross

**Re: Charter Realty Holdings Ltd. (the "Applicant") – application for an order not to be a reporting issuer under the securities legislation of Ontario and Saskatchewan (the "Jurisdictions")**

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions not to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) 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;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 - *Marketplace Operation*;

(c) the Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) 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 not a reporting issuer.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

### 2.1.3 Focused Global Trends Fund - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – exemption granted to permit a fund that uses specified derivatives to calculate its NAV once per week subject to certain conditions – relief needed from the requirement that an investment fund that uses specified derivatives must calculate its NAV daily – relief not prejudicial to the public interest because the NAV will be posted on a website and the Class A units of the investment fund are expected to be listed on the TSX which will provide liquidity for investors – Class F units of the investment fund are convertible to Class A units – National Instrument 81-106 Investment Fund Continuous Disclosure.

**Applicable Legislative Provisions**

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 14.2(3)(b), 17.1.

**July 4, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, 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**
**FOCUSED GLOBAL TRENDS FUND**
**(the "Filer")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation (the "**Legislation**") of the Jurisdictions for relief from Section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**"), which requires the net asset value of an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-102 *Mutual Funds*) to be calculated at least once every business day (the "**Requested Relief**").

Under the Mutual Reliance Review System ("**MRRS**") 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:

**The Filer**

1. The Filer will be a non-redeemable investment fund (as defined in NI 81-106) to be established under the laws of the Province of Ontario pursuant to a trust agreement to be entered into between Connor, Clark & Lunn Capital Markets Inc. (the "**Manager**"), as manager of the Filer, and RBC Dexia Investor Services Trust, as trustee of the Filer. The principal office of the Filer and the Manager is located at 181 University Avenue, Suite 300, Toronto, Ontario M5H 3M7.

**The Offering**

2. A preliminary prospectus ("**Preliminary Prospectus**") for the Filer dated May 28, 2007 has been filed with the securities regulatory authorities in each of the Jurisdictions under SEDAR #1109644.

3. The Filer proposes to issue an unlimited number of two classes of combined units, Combined Class A Units and Combined Class F Units (collectively, "**Combined Units**"). Each Class A Combined Unit consists of one Class A Unit and one-half of one transferable Warrant for one Class A Unit. Each Class F Combined Unit consists of one Class F Unit and one-half of one transferable Warrant for one Class F Unit. The Class A Units and the Class F Units together are referred to herein as the "**Units**". Each whole Warrant for one Class A Unit entitles the holder to purchase one Class A Unit at a subscription price of $10.25 on a specified date in 2009 and a specified date in 2010. Each whole Warrant for one Class F Unit entitles the holder to purchase one Class F Unit at a subscription price of $10.25 on a specified date in 2009 and a specified date in 2010.

4. The investment objectives of the Filer are to (i) provide holders of Units ("**Unitholders**") with a stable stream of monthly cash distributions initially targeted to be $0.04167 per Unit (representing a yield of approximately 5.0% per annum on the issue price of $10.00 per Combined Unit); and (ii)

preserve and enhance the net asset value ("NAV") per Unit of the Filer.

5. The Manager, on behalf of the Filer, has retained Pier 21 Asset Management Inc. (the "**Investment Manager**") to act as the investment manager of the Filer. The Investment Manager has retained Carnegie Asset Management Fondsmaeglersleskab A/S (the "**Sub-Advisor**") to provide investment advisory and portfolio management services to the Filer.

6. To achieve its investment objectives, the net proceeds from the offerings of Combined Units will be invested in an actively managed portfolio (the "**Portfolio**") consisting of equity securities of global companies. The Portfolio will be actively managed by the Sub-Advisor.

7. The Filer will be exposed to a number of foreign currencies. The Sub-Advisor will take currency exposure into account in managing the Portfolio. The Manager intends that at least 80% of the value of the Portfolio's non-Canadian currency exposure will be hedged back to the Canadian dollar.

8. The Filer does not intend to continuously offer Units once the Filer is out of primary distribution.

**The Combined Units**

9. The Class A Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the "**TSX**"). As a result, Class A Unitholders will not have to rely solely on the redemption features of the Units as described in the Preliminary Prospectus in order to provide liquidity for their investment. The Class F Units will not be listed on a stock exchange but will be convertible into Class A Units on a monthly basis, based on the NAV of each class of Units.

10. Units may be surrendered for redemption monthly on the last business day of a month ("**Monthly Redemption Date**"). The redemption amount ("**Monthly Redemption Amount**") for Class A Units surrendered for redemption on a monthly basis is equal to the lesser of (i) 96% of the weighted average trading price of the Class A Units on the TSX during the 15 trading days preceding the Monthly Redemption Date, and (ii) the closing market price of the Class A Units on the principal market on which the Class A Units are quoted for trading for the Monthly Redemption Date. The redemption amount for Class F Units surrendered for redemption on a monthly basis is equal to the product of (i) the Monthly Redemption Amount and (ii) a fraction, the numerator of which is the most recently calculated NAV per Class F Unit and the denominator of which is the most recently calculated NAV per Class A Unit.

11. Commencing in 2008, the Units will also be redeemable once annually ("**Redemption Date**") at a price equal to 100% of the NAV per Unit of that class, less any costs of funding the redemption.

**Calculation of Net Asset Value**

12. Under clause 14.2(3)(b) of NI 81-106, an investment fund that uses or holds specified derivatives, such as the Filer intends to do, must calculate its net asset value on a daily basis.

13. The Filer proposes to calculate the NAV per Unit of each class on each Friday during the year, or, if a Friday is not a business day, then on the business day following such Friday, and each Redemption Date, and upon the implementation of the reinvestment plan, each distribution payment date.

14. The Preliminary Prospectus discloses and the final prospectus of the Filer will disclose that the Manager will post the NAV per Unit of each class on its website (www.cclcapitalmarkets.com) and will also make this information available to Unitholders upon request.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted for so long as:

(a) the Class A Units are listed on the TSX; and

(b) the Filer calculates its NAV per Unit at least weekly.

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

### 2.1.4 Premium Income Corporation II - MRRS Decision

**Headnote**

Mutual Reliance Review System fro Exemptive Relief Applications – exemption from National Instrument 81-106 Investment Fund Disclosure granted to permit a fund that uses specified derivatives to calculate its NAV weekly subject to certain conditions – relief needed from the requirement that an investment fund that uses specified derivatives must calculated its NAV daily.

**Applicable Legislative Provisions**

National Instrument 81-106 – Investment Fund Disclosure, ss. 14.2(3)(b), 17.1.

**July 5, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK 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**
**PREMIUM INCOME CORPORATION II**
**(the "Filer")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for an exemption from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**") to calculate net asset value at least once every business day (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:

**The Filer**

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer's promoter and investment manager is Mulvihill Capital Management Inc. ("**MCM**"), and its manager is Mulvihill Fund Services Inc. (the "**Manager**"), a wholly-owned subsidiary of MCM. The head office of the Manager is located in the province of Ontario.

**The Offering**

2. The Filer will make an offering (the "**Offering**") to the public of class A shares (the "Class A Shares") and preferred shares (the "**Preferred Shares**") (collectively, the "**Shares**") in each province of Canada. A unit will consist of one Class A Share and one Preferred Share (a "Unit").

3. A preliminary prospectus for the Filer dated May 25, 2007 (the "**Preliminary Prospectus**") has been filed with the securities regulatory authority in each province of Canada.

4. The Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the "**TSX**"). An application requesting conditional listing approval has been made by the Filer to the TSX.

5. The Offering of the Shares by the Filer is a one-time offering and the Filer will not continuously distribute the Shares.

**The Shares**

6. The Filer's objectives in respect of the Class A Shares are: (i) to provide holders of Class A Shares with regular monthly cash distributions in an amount targeted to be 5.00% per annum on the net asset value of the Class A Shares; and (ii) to provide holders of Class A Shares with the opportunity for leveraged growth in net asset value and distributions per Class A Share.

7. The Filer's objectives in respect of the Preferred Shares are: (i) to provide holders of Preferred Shares with fixed cumulative preferential monthly cash distributions in the amount of $0.04375 per Preferred Share ($0.525 per year) representing a yield on the issue price of the Preferred Shares of 5.25% per annum; and (ii) to return the issue price

of $10.00 per Preferred Share to holders of Preferred Shares at the time of redemption of such shares on December 1, 2014.

8. The net proceeds from the Offering will be invested in a portfolio of common shares ("**Bank Shares**") of Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and The Toronto-Dominion Bank.

9. To generate additional distributable income for the Filer, the Filer will from time to time write covered call options in respect of all or part of its Bank Shares.

10. The Shares may be surrendered for retraction at any time and will be retracted on a monthly basis on the last business day of each month (a "**Valuation Date**"), provided such Shares are surrendered for retraction not less than 10 business days prior to the Valuation Date. The Filer will make payment for any Shares retracted on or before the fifteenth business day of the following month.

11. The retraction price for a Class A Share surrendered for retraction on a monthly basis will be equal to 95% of the difference between (i) the net asset value per Unit determined as of the relevant Valuation Date, and (ii) the cost to the Filer of the purchase of a Preferred Share in the market for cancellation.

12. The retraction price for a Preferred Share surrendered for retraction on a monthly basis will be equal to 95% of the lesser of (i) the net asset value per Unit determined as of the relevant Valuation Date less the cost to the Filer of the purchase of a Class A Share in the market for cancellation and (ii) $10.00.

13. Shareholders also have an annual retraction right under which they may concurrently retract an equal number of Class A Shares and Preferred Shares on the November Valuation Date of each year, commencing on the November 2008 Valuation Date. The price paid by the Filer for such a concurrent retraction will be equal to the net asset value per Unit calculated as of such date, less any costs associated with the retraction.

**Calculation of Net Asset Value**

14. Under clause 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer is generally required to calculate the net asset value per security of the fund on at least a weekly basis. Furthermore, an investment fund that uses or holds specified derivatives, such as the Filer intends to do, must calculate its net asset value per security on a daily basis.

15. The Filer proposes to calculate its net asset value per Unit and per Class A Share on a weekly basis.

16. The Preliminary Prospectus discloses and the final prospectus will disclose that the net asset value per Unit and per Class A Share will be made available to the public on a weekly basis by the Manager on the Manager's website at www.mulvihill.com and will be available to the public upon request.

**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 for so long as:

(a) the Class A Shares and the Preferred Shares are listed on the TSX; and

(b) the Filer calculates its net asset value per Unit at least weekly.

"Leslie Byberg"
Manager, Investment Funds
Ontario Securities Commission

### 2.1.5 TDb Split Corp. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Exemptive relief granted to an exchange traded fund from certain mutual fund requirements and restrictions on: investments, organizational costs, calculation and payment of redemptions, preparation of compliance reports, and date of record for payment of distributions – Since investors will generally buy and sell units through the TSX, there are adequate protections and it would not be prejudicial to investors – National Instrument 81-102 – Mutual Funds.

**Applicable Legislative Provisions**

National Instrument 81-102 – Mutual Funds, ss. 2.1(1), 3.3, 10.3, 10.4(1), 12.1(1), 14.1, 19.1.

**June 28, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, 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**
**TDb SPLIT CORP.**
**(the Filer)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that exempts the Filer from the following requirements of National Instrument 81-102 - Mutual Funds (**NI 81-102**) (the **Requested Relief**):

(a) subsection 2.1(1), which prohibits a mutual fund from purchasing a security of an issuer if, immediately after the transaction, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of the issuer;

(b) section 3.3, which prohibits a mutual fund or its security holders from bearing the costs of the preparation and filing of any prospectus;

(c) section 10.3, which requires that the redemption price of a security of a mutual fund to which a redemption order pertains shall be the net asset value of a security of that class, or series of class, next determined after the receipt by the mutual fund of the order;

(d) subsection 10.4(1), which requires that a mutual fund shall pay the redemption price for securities that are the subject of a redemption order within three business days after the date of calculation of the net asset value per security used in establishing the redemption price;

(e) subsection 12.1(1), which requires a mutual fund that does not have a principal distributor to complete and file a compliance report, and accompanying letter of the auditor, in the form and within the time period mandated by subsection 12.1(1); and

(f) section 14.1, which requires that the record date for determining the right of securityholders of a mutual fund to receive a dividend or distribution by the mutual fund shall be calculated in accordance with section 14.1.

Under the Mutual Reliance Review System (MRRS) 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:

**The Filer**

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer's manager is Quadravest Inc. (the **Manager**), and its investment manager is Quadravest Capital Management Inc. (**Quadravest**).

**The Offering**

2. The Filer will make an offering (the **Offering**) to the public, on a best efforts basis, of Class A

shares (the **Class A Shares**) and of priority equity shares (the **Priority Equity Shares**) (collectively, the **Shares or Units**) in each of the provinces of Canada. A Unit consists of one Priority Equity Share and one Class A Share.

3. The Filer will not continuously distribute the Shares.

4. A preliminary prospectus dated May 29, 2007 (the **Preliminary Prospectus**) has been filed with the securities regulatory authorities in each of the Jurisdictions under Sedar Project No. 1113498.

5. The Class A Shares and the Priority Equity Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the **TSX**). An application for conditional listing approval has been made by the Filer to the TSX.

6. The expenses incurred in connection with the Offering, including the costs of the incorporation, formation or initial organization of the Filer and of the preparation and filing of the Preliminary Prospectus and prospectus of the Filer (the **Expenses of the Offering**) will be borne by the Filer rather than the promoters or Manager of the Filer, provided however, that such expenses will not exceed 1.5% of the gross proceeds of the Offering.

7. The net proceeds of the offering will be invested in common shares (the **TD Bank Shares**) of The Toronto-Dominion Bank (**TD Bank**). The TD Bank Shares and any cash held by the Filer will be the only assets of the Filer.

**The Shares**

8. As disclosed in the Preliminary Prospectus, the Filer's objectives in respect of its Priority Equity Shares are to provide holders of the Priority Equity Shares with fixed cumulative preferential monthly cash dividends in the amount of $0.04375 per Priority Equity Share to yield 5.25% per annum on the original issue price; and, on or about December 1, 2014 or such other date as the Filer may terminate (the **Termination Date**), to pay such holders of such shares the original issue price of those shares on the Termination Date.

9. As disclosed in the Preliminary Prospectus, in respect of the Class A Shares, the Filer's objectives are to provide holders of Class A Shares with regular monthly cash dividends targeted to be $0.05 per Class A Share to yield 6% per annum on the original issue price; and, on or about the Termination Date, to pay holders of Class A Shares at least the original issue price of those shares.

10. The Shares will be retractable at the option of the holder on a monthly and annual basis at a price computed by reference to the value of a proportionate interest in the net assets of the Filer. As a result, the Filer will be a "mutual fund" under applicable securities legislation.

11. The record date for shareholders of the Filer entitled to receive dividends will be established in accordance with the requirements of the TSX from time to time.

12. To supplement the dividends earned on the Portfolio and to reduce risk, the Filer will from time to time write covered call options in respect of all or part of the TD Bank Shares.

13. The Priority Equity Shares and Class A Shares may be surrendered for retraction at any time and will be retracted on a monthly basis on the last business day of each month (a **Retraction Date**), provided such shares are surrendered for retraction not less than 20 business days prior to the Retraction Date. The Filer will make payment for any shares retracted within 15 business days of the Retraction Date.

14. Holders of Priority Equity Shares whose shares are surrendered for retraction will be entitled to receive a price per share (the **Priority Equity Share Retraction Price**) equal to the lesser of (i) $10.00; and (ii) 96% of the net asset value per Unit determined as of the Retraction Date less the cost to the Filer of the purchase of a Class A Share in the market for cancellation.

15. Holders of Class A Shares whose shares are surrendered for retraction will be entitled to receive a price per share (the **Class A Share Retraction Price**) equal to 96% of the net asset value per Unit determined as of the Retraction Date less the cost to the Filer of the purchase of a Priority Equity Share in the market for cancellation.

16. Under the investment management agreement between the Filer and Quadravest, Quadravest is entitled to a management fee payable monthly in arrears at an annual rate equal to 0.55% of the Filer's Net Asset Value calculated as at the last Valuation Date in each month.

17. It will be the policy of the Filer to hold the TD Bank Shares and to not engage in any trading of the TD Bank Shares, except:

    (a) to fund retractions or redemptions of Class A Shares and the Priority Equity Shares;

    (b) following the receipt of the stock dividends of the TD Bank Shares;

    (c) in the event of a take-over bid for any of the TD Bank Shares;

(d) if necessary, to fund any shortfall in the distribution on Priority Equity Shares or Class A Shares;

(e) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities; or

(f) certain other limited circumstances including in connection with the Priority Equity Portfolio Protection Plan as described in the Preliminary 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 an exemption is granted from the following requirements of NI 81-102:

(a) subsection 2.1(1) - to enable the Filer to invest all its net assets in the TD Bank Shares;

(b) section 3.3 – to permit the Filer to bear the Expenses of the Offering provided that such expenses will not exceed 1.5% of the gross proceeds of the Offering;

(c) section 10.3 - to permit the Filer to calculate the Priority Equity Share Retraction Price and the Class A Share Retraction Price in the manner described in the Preliminary Prospectus and on the applicable Retraction Date, as defined in the Preliminary Prospectus, following the surrender of Priority Equity Shares and Class A Shares for retraction;

(d) subsection 10.4(1) - to permit the Filer to pay the Priority Equity Share Retraction Price and the Class A Share Retraction Price on the Retraction Payment Date, as defined in the Preliminary Prospectus;

(e) subsection 12.1(1) - to relieve the Filer from the requirements to file the prescribed compliance report; and

(f) section 14.1 - to relieve the Filer from the requirement relating to the record date for payment of dividends or other distributions of the Filer, provided that it complies with the applicable requirements of the TSX.

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

### 2.1.6 Premium Income Corporation II - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – subdivided offering exempted from certain requirements of National Instrument 81-102 Mutual Funds since issuer is fundamentally different from a conventional mutual fund.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 10.3, 10.4(1), 12.1(1), 14.1, 19.1.

**July 5, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR 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**
**PREMIUM INCOME CORPORATION II**
**(the "Filer")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that exempts the Filer from the following requirements of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") in connection with the Class A Shares and the Preferred Shares (as defined below) to be issued by the Filer and described in the preliminary prospectus dated May 25, 2007 (the "**Preliminary Prospectus**"):

(a) section 2.1(1), which prohibits a mutual fund from purchasing a security of an issuer if, immediately after the transaction, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of the issuer;

(b) section 10.3, which requires that the redemption price of a security of a mutual fund to which a redemption order pertains shall be the net asset

value of a security of that class, or series of class, next determined after the receipt by the mutual fund of the order;

(c) subsection 10.4(1), which requires that a mutual fund shall pay the redemption price for securities that are the subject of a redemption order within three business days after the date of calculation of the net asset value per security used in establishing the redemption price;

(d) subsection 12.1(1), which requires a mutual fund that does not have a principal distributor to complete and file a compliance report, and accompanying letter of the auditor, in the form and within the time period mandated by subsection 12.1(1); and

(e) section 14.1, which requires that the record date for determining the right of security holders of a mutual fund to receive a dividend or distribution by the mutual fund shall be calculated in accordance with section 14.1.

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:

**The Filer**

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer's promoter and investment manager is Mulvihill Capital Management Inc. ("**MCM**"), and its manager is Mulvihill Fund Services Inc. (the "**Manager**"), a wholly-owned subsidiary of MCM. The head office of the Manager is located in the province of Ontario.

**The Offering**

2. The Filer will make an offering (the "**Offering"**) to the public, on a best efforts basis, of class A shares (the "**Class A Shares**") and preferred shares (the "**Preferred Shares**") (collectively, the "**Shares**") in each province of Canada. A unit will consist of one Class A Share and one Preferred Share (a "**Unit**").

3. The Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the "**TSX**"). An application requesting conditional listing approval has been made by the Filer to the TSX.

**The Shares**

4. The Filer's objectives in respect of the Class A Shares are: (i) to provide holders of Class A Shares with regular monthly cash distributions in an amount targeted to be 5.00% per annum on the net asset value of the Class A Shares; and (ii) to provide holders of Class A Shares with the opportunity for leveraged growth in net asset value and distributions per Class A Share.

5. The Filer's objectives in respect of the Preferred Shares are: (i) to provide holders of Preferred Shares with fixed cumulative preferential monthly cash distributions in the amount of $0.04375 per Preferred Share ($0.525 per year) representing a yield on the issue price of the Preferred Shares of 5.25% per annum; and (ii) to return the issue price of $10.00 per Preferred Share to holders of Preferred Shares at the time of redemption of such shares on December 1, 2014 (the "**Termination Date**").

6. The net proceeds from the Offering will be invested in a portfolio of common shares ("**Bank Shares**") of Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and The Toronto-Dominion Bank (each, a "**Bank**").

7. To generate additional distributable income for the Filer, the Filer will from time to time write covered call options in respect of all or part of its Bank Shares.

8. The Shares may be surrendered for retraction at any time and will be retracted on a monthly basis on the last business day of each month (a "**Valuation Date"**), provided such Shares are surrendered for retraction not less than 10 business days prior to the Valuation Date. The Filer will make payment for any Shares retracted on or before the fifteenth business day of the following month.

9. Shareholders also have an annual retraction right under which they may concurrently retract an equal number of Class A Shares and Preferred Shares on the November Valuation Date of each year, commencing on the November 2008 Valuation Date. The price paid by the Filer for such a concurrent retraction will be equal to the net asset value per Unit calculated as of such date, less any costs associated with the retraction.

10. The retraction payments for the Shares surrendered for retraction on the Valuation Date will be calculated at a discount to the net asset

value per Unit of the Filer on the applicable Valuation Date in the manner described in the Preliminary Prospectus.

11. Any Shares outstanding on the Termination Date will be redeemed by the Filer on such date.

12. The Offering of the Shares by the Filer is a one-time offering and the Filer will not continuously distribute the Shares.

13. It will be the policy of the Filer to invest exclusively in Bank Shares and, from time to time, to write covered call options and cash-covered put options in respect of Bank Shares.

**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 an exemption is granted from the following requirements of NI 81-102:

(a) section 2.1(1) - to enable the Filer to invest all of its net assets in the Bank Shares, provided that the Filer does not become an insider of any Bank as a result of such investment;

(b) section 10.3 - to permit the Filer to calculate the retraction price for the Class A Shares and the Preferred Shares in the manner described in the Preliminary Prospectus and on the applicable Valuation Date as defined in the Preliminary Prospectus, following the surrender of Class A Shares and Preferred Shares for retraction;

(c) subsection 10.4(1) - to permit the Filer to pay the retraction price for the Class A Shares and the Preferred Shares on the Retraction Payment Date, as defined in the Preliminary Prospectus;

(d) subsection 12.1(1) - to relieve the Filer from the requirement to file the prescribed compliance reports; and

(e) section 14.1 - to relieve the Filer from the requirement relating to the record date for payment of dividends or other distributions of the Filer, provided that it complies with the applicable requirements of the TSX.

"Leslie Byberg"
Manager, Investment Funds
Ontario Securities Commission

### 2.1.7 Red & Black Lux S.À R.L. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Take-over bid – Exemption from Part XX of Securities Act (Ontario) Application under Section 104(2)(c) of the Securities Act (Ontario) – De Minimis exemption unavailable – Evidence suggests that number of Canadian holders more than the de minimis threshold – Germany is not a jurisdiction recognized for the purposes of clause 93(1)(e) of the Securities Act (Ontario) – Bid exempted from the requirements of Part XX, subject to certain conditions – Commission granted relief as take-over bid conducted in accordance with the laws of Germany providing protection to target shareholders – All Material provided to foreign shareholders to be provided to Ontario shareholders – All shareholders treated equally.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93(1)(e), 95-100, 104(2)(c).

**Recognition Orders Cited**

In the Matter of the Recognition of Certain Jurisdictions (Clauses 93(1)(e) and 93(3)(h) of the Act) (1997) 20 OSBC 1035.

**July 6, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO, BRITISH COLUMBIA, ALBERTA,**
**SASKATCHEWAN, MANITOBA, QUÉBEC,**
**NOVA SCOTIA, NEW BRUNSWICK 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**
**RED & BLACK LUX S.À R.L.**
**(the "Filer")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the formal take-over bid requirements in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of

change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the "Take-over Bid Requirements"), do not apply to the proposed cash offer (the "Offer") by the Filer for all of the outstanding common bearer shares (the "Target Shares") and all of the outstanding of preferred bearer shares (the "Target Preferred Shares") of HUGO BOSS AG ("Target") (the "Requested Relief");

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(i) the Ontario Securities Commission is the principal regulator for this application; and

(ii) this MRRS decision document evidences that decision of each Decision Maker.

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation incorporated under the laws of Luxembourg. The Filer is a newly formed limited liability company, which is indirectly and ultimately owned and controlled by Permira Holdings Limited, a limited company registered under the laws of Guernsey with its registered office in St Peter Port, Guernsey, Channel Islands.

2. The Filer's registered office is located in 282 route de Longwy, L-1940 Luxembourg.

3. The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions. The Filer's securities are not listed or quoted for trading on any Canadian stock exchange or market.

4. Target's registered office is located in Metzingen, Germany.

5. Target's issued and outstanding share capital consists of 35,860,000 Target Shares and 34,540,000 Target Preferred Shares.

6. Target is a corporation incorporated under the laws of the Federal Republic of Germany, with its common bearer shares are traded at the Official Market (*Amtlicher Markt*) of the Stock Exchanges of Frankfurt, XETRA, Stuttgart, Düsseldorf, München and Hamburg and its preferred bearer shares admitted for trading at the Official Market of the Stock Exchanges of Berlin-Bremen and Hanover. Target is engaged in all key fashion areas, ranging from classic clothing, evening and leisurewear to functional sportswear and complementary accessories as well as eyewear, watches, fragrances and cosmetics.

7. Both the Target Shares and the Target Preferred Shares constitute "equity securities" for the purposes of the definition of "take-over bid" in the Legislation.

8. Target is not a reporting issuer or equivalent in any of the Jurisdictions. Target's securities are not listed or quoted for trading on any Canadian stock exchange or market.

9. On June 1, 2007, the Filer announced its decision to make a cash tender offer for all of the Target Shares and Target Preferred Shares in each case in exchange for a consideration equal to the volume-weighted average price for the Target Shares and the Target Preferred Shares, as the case may be, during the last three months prior to the announcement on its decision to make a cash tender offer. Immediately prior to the announcement of the Filer's intention to make the offer, the Filer held none of the outstanding Target Shares or Target Preferred Shares.

10. The Offer is being made, and the offer document reflecting the terms of the Offer (the "Offer Document") is being prepared, in accordance with the laws of the Federal Republic of Germany and, in particular, the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Ubernahmegesetz, or the "WpUG"*). It is made in compliance with the provisions of the statutory regulations based on the WpÜG and in compliance with any applicable provisions of US securities law.

11. The Offer Document is expected to be submitted to the applicable securities regulatory authority in Germany prior to or on 29 June 2007 for review. The Offer Document is expected to be made available to holders of Target Shares and Target Preferred Shares after approval by the German regulator. In accordance with German law, the Offer Document will be available on the internet under *www.blackandred-angebot.de* (where a non-binding English convenience translation will also be available) and a public announcement in the federal electronic Gazette. Such announcement will specify where and how the shareholders may obtain a copy of the Offer Document free of charge.

12. A public announcement in a national Canadian newspaper and in a french-language newspaper that is widely circulated in Québec will specify where and how holders of the Target Shares in the Jurisdictions may obtain a copy of the Offer

Document (or a non-binding English convenience translation) free of charge. As soon as practicable after such date, the Filer will also file a copy of the Offer Document with the Decision Maker in each of the Jurisdictions.

13. As permitted by German law, Target has issued bearer securities and does not maintain a share register. Accordingly, any information about shareholdings of Target Shares and Target Preferred Shares in Canada can only be determined on a limited enquiry basis by Target. Based on a duly diligent review by the Filer of available shareholder information (which review accounted for 97.33% and 61.79% of the issued and outstanding Target Shares and Target Preferred Shares, respectively), the Filer believes that there is one holder of Target Shares resident in Canada (in the Province of Alberta) holding 7,100 Target Shares representing approximately 0.02% of the Target Shares outstanding and one holder of Target Preferred Shares resident in Canada (in the Province of Ontario) holding 2,168,994 Target Preferred Shares representing approximately 6.28% of the Target Preferred Shares outstanding.

14. If any material relating to the Offer is required by law to be sent by the Filer to holders of Target Shares and Target Preferred Shares in Germany, such material will also be sent, as applicable, to holders of such shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes, and in any event will be concurrently filed with each Decision Maker.

15. In accordance with the laws of the Federal Republic of Germany (the home jurisdiction of the Target), all of the holders of Target Shares to whom the Offer is made, will be treated equally under the terms of the Offer.

**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:

(i) the Offer and all amendments to the Offer are made in compliance with the laws of the Federal Republic of Germany;

(ii) any material relating to the Offer and any amendments thereto that are sent to the holders of the Target Shares and Target Preferred Shares in Germany by the Filer, will be sent to the holders of the Target Shares and Target Preferred Shares resident in any of the Jurisdictions (if addresses are known), together with an English convenience translation, and copies thereof filed with the Decision Maker in each Jurisdiction; and

(iii) the Filer makes a public announcement in a national Canadian newspaper and in a french-language newspaper that is widely circulated in Québec specifying where and how holders of the Target Shares and Target Preferred Shares in the Jurisdictions may obtain a copy of the Offer Document (or an English convenience translation) free of charge and files copies thereof with the Decision Maker in each of the Jurisdictions.

"James E. A. Turner"

"Paul K. Bates"

### 2.1.8 Acuity 2007 Flow-Through Limited Partnership - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – exemptions granted to flow-through limited partnership from the requirements in National Instrument 81-106 Investment Fund Continuous Disclosure to file an annual information form. Flow-through limited partnership has a short lifespan and does not have a readily available secondary market.

**Applicable Legislative Provisions**

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2 and 17.1.

**July 4, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, 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**
**ACUITY 2007 FLOW-THROUGH LIMITED PARTNERSHIP**
**(THE "FILER" OR THE "PARTNERSHIP")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement in section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (the "Instrument") to prepare and file an annual information form (the "AIF") shall not apply to the Filer (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:

(i) The Partnership was formed to invest primarily in certain common shares ("Flow-Through Shares") of companies involved primarily in oil and gas, mining or renewable energy exploration and development ("Resource Companies") pursuant to agreements ("Resource Agreements") between the Partnership and the relevant Resource Company. Under the terms of each Resource Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will agree to incur and renounce to the Partnership expenditures in respect of resource exploration and development which qualify as Canadian exploration expense or as Canadian development expense which may be renounced as Canadian exploration expense to the Partnership.

(ii) The Filer is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the "Act") on December 19, 2006. It is the current intention of the general partner of the Filer that on or about May 15, 2009, the Filer will enter into an ()agreement with Natural Resource Fund Ltd. (the "Mutual Fund"), an open-ended mutual fund, whereby assets of the Partnership would be exchanged for redeemable shares of the Mutual Fund. Upon dissolution, the limited partners of the Partnership (the "Limited Partners") would then receive their pro rata share of the shares of the Mutual Fund.

(iii) The Partnership is a short-term special purpose vehicle which will be dissolved within approximately 2 years of its formation. The primary investment purpose of the Partnership is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits that accrue when Resource Companies renounce exploration and development

expenditures to the Partnership through the Flow-Through Shares.

(iv) The limited partnership units of the Partnership (the "Units") are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners.

(v) The Filer is a reporting issuer in all of the Jurisdictions.

(vi) Given the limited range of business activities to be conducted by the Filer, the short duration of its existence and the nature of the investment of the Limited Partners, the preparation and distribution of the AIF by the Filer will not be of any benefit to the Limited Partners and may impose a material financial burden on the Filer. Upon the occurrence of any material change to the Filer, Limited Partners would receive all relevant information from the material change reports the Filer is required to file with the Decision Makers.

**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 this exemption shall terminate upon the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

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

### 2.1.9 Deloitte Management Services LP - MRRS Decision

**Headnote**

MRRS – exemptions from registration requirement and prospectus requirement for distribution of LP Units by limited partnership set up by professional services firm for tax planning purposes to family trusts of partners of professional services firm – relief granted subject to certain terms and conditions, including resale restrictions and that the family trust receive a copy of the decision document and acknowledge that no disclosure to be provided.

**Applicable Legislative Provisions**

Securities Act, R.S.O, 1990, c. s.5, as am., ss. 15, 53, 74(1).

**June 8, 2007**

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

**AND**

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

**AND**

**IN THE MATTER**
**DELOITTE MANAGEMENT SERVICES LP**
**(the "Filer")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the proposed distribution, from time to time, of limited partnership units (LP Units) of Deloitte Management Services LP (DMS LP) to certain Family Trusts (as defined below) will not be subject to the Registration Requirement and the Prospectus Requirement (as defined in National Instrument 14-101 – *Definitions*) contained in the Legislation (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

**Interpretation**

Defined terms 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 this Filer:

1. Deloitte Canada is a professional services firm that provides audit and assurance, tax, financial advisory, enterprise risk management and consulting services through a number of operating entities including, Deloitte & Touche LLP, Samson Belair/Deloitte & Touche s.e.n.c.r.l. and Deloitte Inc. The Deloitte Canada firm has over 50 offices located in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador. Deloitte Canada may, in the future, also have offices in the other provinces and territories of Canada in which this application is being made.

2. The individuals that are partners of the Deloitte Canada firm are partners in two holding partnerships, Deloitte Touche Tohmatsu LLP and/or Deloitte Touche Tohmatsu Management Consultants LP, which control the operating entities referred to above.

3. Deloitte Touche Tohmatsu LLP is an Ontario limited liability partnership and the partners of Deloitte Touche Tohmatsu LLP are approximately 410 chartered accountants or their professional corporations (the CA Partners).

4. A professional corporation is a corporation incorporated by a partner of the Deloitte Canada firm under the laws of one of the provinces of Canada, which holds, where required, a valid permit or license to practice its profession in such province and all of the shares of which are owned by and the only director of which is the partner of the Deloitte Canada firm.

5. Deloitte Touche Tohmatsu Management Consultants LP is a limited partnership established under the laws of Manitoba. The limited partners of Deloitte Touche Tohmatsu Management Consultants LP are (i) all of the CA Partners and (ii) approximately 115 other professionals who do not require the chartered accountant designation to carry on their practices (i.e. lawyers, engineers and economists) or their professional corporations or other holding corporations (the Non CA Partners). For the purposes of this application, the CA Partners and the Non CA Partners are collectively referred to as the Deloitte Partners.

6. DMS LP is a limited partnership established under the laws of Manitoba which carries on the business of providing business infrastructure and support services to Deloitte & Touche LLP, Samson Belair/Deloitte & Touche s.e.n.c.r.l., Deloitte Inc., Deloitte Touche Tohmatsu LLP, Deloitte Touche Tohmatsu Management Consultants LP and any other entities that are part of the Deloitte Canada firm (collectively Deloitte). These services are provided pursuant to a business infrastructure and support services agreement entered into by DMS LP and Deloitte.

7. DMS LP is not and has no present intention of becoming a reporting issuer in Canada.

8. The general partner of DMS LP is 6644511 Canada Limited (the GP), a corporation incorporated under the *Canada Business Corporations Act*, all of the issued and outstanding shares of which will be owned by another corporation (GP Holdco) and the shares of GP Holdco will in turn be owned by a trust for the benefit of the Deloitte Partners.

9. DMS LP will issue LP Units from time to time to trusts (collectively, the Family Trusts and individually, a Family Trust) that are resident in Canada for tax purposes and all of the beneficiaries of which are only one or more of the following (collectively Permitted Beneficiaries):

   (a) the living grandparents of a Deloitte Partner or of the spouse or common law partner of a Deloitte Partner;

   (b) the living parents of a Deloitte Partner or of the spouse or common law partner of a Deloitte Partner;

   (c) a spouse or common law partner of a Deloitte Partner;

   (d) the living issue of a Deloitte Partner or of the spouse or common law partner of a Deloitte Partner;

   (e) a Deloitte Partner;

   (f) the siblings of a Deloitte Partner or the siblings of the spouse or common law partner of a Deloitte Partner; and

   (g) a trust or trusts all of the beneficiaries of which are any one or more of the persons named in clauses (a), (b), (c), (d), (e) or (f).

   Each Family Trust will pay an aggregate subscription amount of $100 to DMS LP, and

receive 10 LP Units at a subscription price of $10 per LP Unit.

10. No beneficiary of a Family Trust, other than a Deloitte Partner, will directly or indirectly contribute money or other assets to the Family Trust in order to finance the acquisition of the LP Units, or will be liable for any loan or other financing obtained by the Family Trust for that purpose.

11. No beneficiary of a Family Trust, other than a Deloitte Partner and any other beneficiary who is also a trustee, will be involved in the making of any investment decision of the Family Trust.

12. Deloitte Partners have not been and will not be induced to purchase LP Units by expectation of status or continued status as a partner of Deloitte Canada or Deloitte Touche Tohmatsu Management Consultants LP.

13. Each Family Trust that subscribes for LP Units will have three trustees, at least two of whom will be residents of Ontario. Accordingly, each Family Trust will be resident in Ontario.

14. Although it is expected that each Family Trust will be resident in the Province of Ontario, the Permitted Beneficiaries may be resident in any province or territory of Canada and may receive beneficial interests in the LP Units as well as certain information and materials relating to the Distributions in their jurisdiction of residence. Accordingly, the Distributions may entail trades in each province and territory of Canada.

15. No Family Trust that holds an LP Unit may sell, transfer, assign, gift, exchange, mortgage, pledge, charge or otherwise dispose of or encumber or deal with any LP Unit held by such limited partner, except for changes in legal (but not beneficial) ownership arising as a result of substitution of the trustee of a limited partner with a new trustee, and except upon cancellation of the LP Unit.

16. As the LP Units are not transferable, except as described above, no market will develop for the LP Units.

17. If (i) a Family Trust ceases to have only Permitted Beneficiaries, (ii) the Deloitte Partner who either is the Permitted Beneficiary or who has the specified relationship with the Permitted Beneficiaries, ceases to be a Deloitte Partner for any reason, (iii) the limited partner purports to sell, transfer, assign, gift, exchange, mortgage, pledge, charge or otherwise dispose of or encumber or deal with his, her or its LP Units, or (iv) such limited partner becomes insolvent or bankrupt or makes a filing or gives a notice of intention to make a proposal or assignment, such limited partner, will cease to be a limited partner and will be entitled to receive from DMS LP the amount of $100 in respect of the ten LP Units held and the amount of all allocations on such LP Unit that have not yet been distributed, at the point in time which the limited partner ceases to be a limited partner.

18. Profits and losses of DMS LP will be allocated as follows: 0.01% to the GP and 99.99% to the limited partners.

19. Within 120 days of the end of every financial year, the GP will prepare and submit, or cause to be prepared and submitted, to the limited partners of DMS LP unaudited financial statements comprised of a balance sheet as at the financial year end and a statement of income and a statement of cash flow of DMS LP for the year then ended.

20. Prior to the issuance of LP Units to a Family Trust, the Filer will obtain a written statement (a Statement) from the Family Trust acknowledging receipt of a copy of the decision (the Decision Document) and further acknowledging the subscriber's understanding that the right to receive continuous disclosure is not available to a Family Trust in respect of the LP Units.

**Decision**

The Decision Makers being satisfied that they have jurisdiction to make this decision and that the relevant test contained under the Legislation has been met, the Requested Relief is granted provided that

(a) Prior to the issuance of LP Units to a Family Trust, the Filer will obtain a Statement from the Family Trust acknowledging receipt of a copy of the Decision Document and further acknowledging the subscriber's understanding that the right to receive continuous disclosure is not available to a Family Trust in respect of the LP Units; and

(b) the first trade in LP Units shall be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless such first trade is to the Filer for cancellation or is a change in legal ownership arising as a result of a substitution of the trustee of a limited partner with a new trustee.

"James E. A. Turner"

"Margot C. Howard"

### 2.1.10 Guardian Group of Funds Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – s. 19.1 of National Instrument 81-102 Mutual Funds – exemption from section 2.7 (1)(a) of NI 81-102 to permit interest rate and credit derivative swaps with a remaining term to maturity of greater than 3 years; exemption from section 2.8(1) of NI 81-102 to the extent that cash cover is required in respect of specified derivatives to permit the Funds to cover specified derivative positions with: any bonds, debentures, notes or other evidences of indebtedness that are liquid; and exemption from sections 2.8(1)(d) and (f)(i) NI 81-102 to permit the Funds when they open or maintain a long position in a standardized future or forward contract or when they enter into or maintain an interest rate swap position and during the periods when the Funds are entitled to receive payments under the swap, to use as cover, an option to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.7(1)(a), 2.8(1), 2.8(1)(d), 2.8(1)(f)(i) and 19.1.

**July 4, 2007**

**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, NUNAVUT AND YUKON TERRITORY**
**(THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF**
**GUARDIAN GROUP OF FUNDS LTD.**
**(THE FILER)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting GGOF Global Bond Fund (the Bond Fund) and the GGOF Floating Rate Income Fund (the Floating Rate Fund) (collectively, the Funds) pursuant to Section 19.1 of National Instrument 81-102 Mutual Fund (NI 81-102) from the requirements in:

1. section 2.7 (1)(a) of NI 81-102, insofar as it requires an interest rate swap or credit default swap to have a remaining term to maturity of 3 years (or 5 years in certain circumstances), to permit the Funds to enter into interest rate or credit default swaps with a remaining term to maturity of greater than 3 years;

2. section 2.8(1) of NI 81-102 to the extent that cash cover is required in respect of specified derivatives to permit the Funds to cover specified derivative positions with:

   (a) any bonds, debentures, notes or other evidences of indebtedness that are liquid (Fixed Income Securities);

   (b) floating rate evidences of indebtedness; and

3. sections 2.8(1)(d) and (f)(i) of NI 81-102 to permit the Bond Fund when:

   (a) it opens or maintains a long position in a debt-like security that has a component that is a long position in a forward contract or in a standardized future or forward contract; or

   (b) it enters into or maintains a swap position and during the periods when the Bond Fund is entitled to receive payments under the swap;

   to use as cover, a right or obligation to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap.

(paragraphs 1, 2 and 3 collectively will be referred to as the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) Ontario 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:

**The Funds**

1. The Filer is the manager of the Funds. The Filer is registered as an investment counsel/portfolio manager and as a mutual fund dealer. The Manager's head office is in Toronto, Ontario.

2. Each of the Funds is a mutual fund trust established in Ontario. The Funds are offered by prospectus in all the Jurisdictions and are reporting issuers. The Bond Fund and the Floating Rate Fund had net asset values of approximately $24 million and $91 million respectively in May, 2007.

3. The Bond Fund's goal is to preserve investors' capital and provide a competitive total return comprised of capital appreciation and a moderate amount of income by investing primarily in a diversified portfolio of fixed income securities, such as bonds and debentures issued by governments and corporations or by obtaining exposure to such securities.

4. The Bond Fund may use derivative instruments to gain exposure to securities and markets instead of investing in the securities directly. The Bond Fund may also use derivative instruments to reduce risk by protecting the Bond Fund against potential losses from changes in interest rates and reducing the impact of currency fluctuations on the Bond Fund' portfolio holdings.

5. The investment manager of the Bond Fund is Pacific Investment Management Company LLC (PIMCO). PIMCO is one of the world's largest fixed income managers. Organized in 1971, PIMCO provides investment management and advisory services to private accounts of institutional and individual clients and to mutual funds around the world.

6. The Floating Rate Fund's goal is to generate a high level of interest income that will fluctuate in line with short term interest rates with a duration of less than 365 days. The Floating Rate Fund may use financial derivatives to transform the income from high yield bonds and debentures into income equivalent to or greater than that generated by short term floating rate instruments with a term less than 365 days.

7. The investment manager of the Floating Rate Fund is Guardian Capital LP (GCLP). GCLP was formed in 1962 and is one of Canada's longest-established, independent investment counselling firms. Over its 45-year history, GCLP has offered its investment management expertise in balanced fund management, equity management and fixed-income management to pension fund clients, institutions, operating and endowment funds, charitable organizations, mutual funds and high net worth individuals. As of March 31, 2007, GCLP had approximately C$ 16.5 B in assets under management.

**Swaps**

8. Section 2.7(1)(a) of NI 81-102 prohibits mutual funds from entering into swaps with terms to maturity of greater than three years, or greater than five years if the contract provides the fund with a right to eliminate its exposure within three years. The Filer seeks the ability to enter into interest rate swaps and credit default swaps on behalf of the Funds without a restriction as to term of the swap.

9. In order to achieve adequate diversification at a reasonable cost while the Bond Fund remains small, PIMCO anticipates utilizing credit default swaps (CDS) or indexes of credit default swaps (CDX). The Bond Fund's benchmark is JP Morgan Global Bond Index, 50% hedged to Canadian dollars.

10. GCLP anticipates using CDX indexes for the Floating Rate Fund in order to transform the income from high yield bonds and debentures into income equivalent to or greater than that generated by short term floating rate instruments with a term less than 365 days.

11. CDX indexes are linked to the number of the most highly liquid CDS, and therefore permit quick and cost effective diversification to high yield and emerging market issuers. CDS have a similar risk profile to their reference entity (corporate or sovereign bonds), or in the case of a CDX, to an average of all the reference entities in the CDX index. The term of a credit default swap imparts credit risk similar to that of a bond of the reference entity with the same term. The Funds will not be able to achieve the same sensitivity to credit risk as the benchmark by using credit default swaps with a maximum term of 3 years. There is no term restriction in NI 81-102 when investing directly in the reference entities (corporate or sovereign bonds).

12. The term of a swap equals the maturity of its exposure, in contrast to other over-the-counter transactions, such as options and forwards, where the contract term and maturity of the underlying security are not related. As a result, there is no restriction under NI 81-102, for example, on a forward with an underlying interest having a term of 10 years whereas there is a restriction if the derivative is in the form of a swap.

13. Both the interest rate swap market and the credit default swap markets are very large and liquid.

The interest rate swap market is generally as liquid as government bonds and more liquid than corporate bonds. The Bank of International Settlements reports $207 trillion in interest rate swaps outstanding as of June 30, 2006. In Canada, there are close to $2 trillion of interest rate swaps outstanding, more than four times the federal and provincial debt.

14. CDS, on average, are highly liquid instruments. Single name CDS are slightly less liquid than the bonds of their reference entities, while CDS on CDX are generally more liquid, than corporate or emerging market bonds. The Bank of International Settlements reported $20.4 trillion in credit default swaps outstanding as of June 30, 2006. The International Swap and Derivatives Association's 2006 mid-year market survey estimated outstanding notional at $26 trillion. Using either source, the credit default swap market has surpassed the size of the equity derivatives markets, and is one of the fastest growing financial markets.

15. Because swap contracts are private agreements between two counterparties, a secondary market for the agreements would be a cumbersome process whereby one counterparty would have to find a new counterparty willing to take over its contract at a fair market price, get the original counterparty to approve the new counterparty, and exchange a whole new set of documents. To avoid that process, market participants unwind their positions by simply entering into an opposing swap with an acceptable counterparty at market value. In this way, the original market or interest rate risk is negated.

16. Credit risk exposure to a counterparty on an interest rate swap transaction is generally a small fraction of the underlying notional exposure, equal to the cumulative price change since the inception of the swap. Even that small risk will be mitigated because the counterparty will be required to have an approved credit rating prescribed by NI 81-102.

17. Potential credit exposure to a counterparty on a credit default swap on a CDX is equal to the notional exposure to any issuer in the index who has defaulted, or in the case of a single name CDS, equal to the full notional exposure. As is the case with interest rate swaps, this exposure is mitigated because the counterparty will be required to have an approved credit rating prescribed by NI 81-102, exposure to any individual counterparty is limited by NI 81-102.

18. By permitting the Funds to enter into swaps beyond 3 year terms, it increases the possibility for the Funds to increase returns due to the fact that the opportunity set of swaps is expanded and it enables the Funds to target exposure that might not otherwise be available in the cash bond markets or could not be achieved as efficiently as in the cash bond markets. Further, it enables the Funds to effect hedging transactions that are more efficient and tailored.

**Using Fixed Incomes Securities and Floating Rate Debt as Cover**

19. Section 2.8 of NI 81-102 requires that mutual funds cover their derivative positions with "cash cover".

20. The current definition of "cash cover" in NI 81-102 includes:

    (a) commercial paper that has a term to maturity of 365 days or less and an approved credit rating and that was issued by a person or company other than a government or permitted supranational agency; and

    (b) cash equivalent that is an evidence of indebtedness with a remaining term to maturity of 365 days or less, and that is issued, or fully and unconditionally guaranteed as to principal and interest, by government entities that are listed in the definition of "cash equivalent" as defined in NI 81-102.

21. The purpose of the cash cover requirement in NI 81-102 is to limit a mutual fund from leveraging its assets when using certain specified derivatives under section 2.8 and to ensure that the mutual fund is in a position to meet its obligations on the settlement date.

22. The Funds desire to be able to use liquid Fixed Income Securities and floating rate evidences of indebtedness as cover for specified derivative transactions with respect to the Funds.

23. While money market instruments which are required by NI 81-102 as cash cover are highly liquid, the price paid for that liquidity comes in the form of very low yields relative to longer dated instruments and even relative to similar risk alternatives.

24. The definition of "cash cover" addresses regulatory concerns of interest rate risk and credit risk by limiting the term of the instruments and requiring the instruments to have an approved credit rating. The Filer submits that by permitting the use of Fixed Income Securities with a remaining term to maturity of 365 days or less and an approved credit rating as cover for specified derivative transactions with respect to the Funds, the regulatory concerns are met since the term and credit rating will be the same as other instruments currently permitted as use as "cash

cover". Further, the longer dated instruments will enhance yields for the Funds.

25. Floating rate evidences of indebtedness, also known as floating rate notes (FRNs), are debt securities issued by the federal or provincial governments, Crown corporations or other corporations and other entities with floating interest rates that reset periodically, usually every 30 to 90 days. However, the term to maturity of FRNs can be more than 365 days.

26. The Funds propose to meet the cash cover requirement in section 2.8 of NI 81-102 by investing in FRNs that have a remaining term to maturity of more than 365 days and with interest rates that reset no longer than every 185 days.

27. The Filer submits that the use of FRNs as cash cover can enhance the return of the Funds without reducing the quality of "cash cover" for the purposes of specified derivatives.

28. For the purposes of money market funds (as defined in NI 81-102) meeting the 90 days dollar-weighted average term to maturity, the term of a floating rate evidence of indebtedness is the period remaining to the date of the next rate setting.

29. There is considered to be minimal interest rate risk associated with FRNs as floating interest rates generally reset on a short term basis, such as every 30 days to 90 days. Credit risk aside, if a FRN resets every 365 days, then the interest rate risk of the FRN is about the same as a fixed rate instrument with a term to maturity of 365 days.

30. Further, financial instruments that meet the current "cash cover" requirement have low credit risk. The current "cash cover" requirements provide that evidences of indebtedness of issuers, other than government agencies, must have approved credit ratings. As a result, if the issuer of FRNs is an entity other than a government agency, the FRNs will have an approved credit rating as required in NI 81-102.

31. FRNs will have adequate liquidity and will otherwise meet the requirements for derivative transactions carried out in accordance with Section 2.8.

**Using Put Options as Cover for Long Positions in Futures, Forwards and Swaps**

32. Sections 2.8(1)(d) and 2.8(1)(f)(i) of NI 81-102 do not permit covering the position in long positions in futures and forwards and long positions in swaps for a period when a fund is entitled to receive payments under the swap, in whole or in part with a right or obligation to sell an equivalent quantity of the underlying interest of the future, forward or swap. In other words, those sections of NI 81-102 do not permit the use of put options or short future positions to cover long future, forward or swap positions.

33. Regulatory regimes in other countries recognize the hedging properties of options for all categories of derivatives, including long positions evidenced by standardized futures or forwards or in respect of swaps where a fund is entitled to receive payments from the counterparty, provided they are covered by an amount equal to the difference between the market price of a holding and the strike price of the option that was bought or sold to hedge it. NI 81-102 effectively imposes the requirement to overcollateralize, since the maximum liability to the fund under the scenario described is equal to the difference between the market value of the long and the exercise price of the option. Overcollateralization imposes a cost on a fund.

34. Section 2.8(1)(c) of NI 81-102 permits a mutual fund to write a put option and cover it with buying a put option on an equivalent quantity of the underlying interest of the written put option. This position has similar risks as a long position in a future, forward or swap and therefore, the Filer submits that the Bond Fund should be permitted to cover a long position in a future, forward or swap with a put option or short future position.

**Derivative Policies and Risk Management**

35. The Filer in conjunction with the portfolio manager, adopts a Statement of Investment Policies and Goals (the "Policy Statement") for each fund. The Policy Statement stipulates the risk management rules which are applied to the investment of the fund's portfolio, including: geographical and currency diversification; maximum holdings by issuer, by percentage of the fund and by industry, for an equity fund; rules regarding term to maturity and credit quality, for an income fund; and rules regarding the use of derivatives in the fund. The portfolio manager is required to provide investment advice in accordance with the Policy Statement, and to report any instances of failure to comply.

36. The Compliance and Investment Departments of the Filer and the Compliance Department of each portfolio manager oversees compliance with the Policy Statement by the portfolio manager. A formal Investment/Compliance reporting meeting takes place with representatives of the portfolio manager on a quarterly basis. As part of its reporting obligations to the Filer, each portfolio manager reports, among other things, on its use of derivatives. Such derivative use is overseen by the Investment Department of the Filer and by the Compliance Department of the portfolio manager. The Investment Department of the Filer reviews

the Policy Statements, including the use of derivatives, on a regular basis, and considers any recommendations for changes from the portfolio manager. The Investment Department also considers the use of derivatives in conjunction with the rules contained in NI 81-102, and is responsible for applying trading limits or other controls, when necessary. Amendments to the Policy Statements must be approved by both the Filer and the portfolio manager. Risk measurement procedures or simulations to test the fund's portfolios under stress are not used.

37. The prospectus and annual information form of the Funds will include disclosure of the nature of the exemptions granted in respect of the Funds.

38. Without these exemptions, the Funds will not have the flexibility to enhance yield and to manage more effectively the exposures under specified derivatives.

**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:

(i) the Fixed Income Securities held by each of the Funds have a remaining term to maturity of 365 days or less and have an "approved credit rating" as defined in NI 81-102;

(ii) the FRNs meet the following requirements:

(a) the floating interest rates of the FRNs reset no later than every 185 days;

(b) the FRNs are floating rate evidences of indebtedness with the principal amounts of the obligations that will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidences of indebtedness;

(c) if the FRNs are issued by a person or company other than a government or "permitted supranational agency" as defined in NI 81-102, the FRNs must have an "approved credit rating" as defined in NI 81-102;

(d) if the FRNs are issued by a government or permitted supranational agency, the FRNs have their principal and interest fully and unconditionally guaranteed by (I) the government of Canada or the government of a jurisdiction in Canada; or (II) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a "permitted supranational agency" as defined in NI 81-102, if, in each case, the FRN has an "approved credit rating" as defined in NI 81-102; and

(e) the FRNs meet the definition of "conventional floating rate debt instrument" in section 1.1 of NI 81-102;

(iii) the Bond Fund shall not open or maintain a long position in a debt-like security that has a component that is a long position in a forward contract, or in a standardized future or forward contract unless the Bond Fund holds

a) cash cover in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative;

b) a right or obligation to sell an equivalent quantity of the underlying interest of the future or forward contract, and cash cover that together with margin on account for the position, is not less than the amount, if any, by which the strike price of the future or forward contract exceeds the strike price of the right or obligation to sell the underlying interest;

c) a combination of the positions referred to in subparagraphs a) and b) that is sufficient, without recourse to other assets of the Fund, to enable the Fund to acquire the underlying interest of the future or forward contract.

(iv) each of the Funds shall not enter into or maintain an interest rate swap position or credit default swap unless for periods when the Fund would be entitled to receive fixed payments under the swap, the Fund holds

a) cash cover in an amount that, together with margin on account for the swap and the market value of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap;

b) a right or obligation to enter into an offsetting interest rate swap or credit default swap on an equivalent quantity and with an equivalent term and cash cover that together with margin on account for the position is not less than the aggregate amount, if any, of the obligations of the Fund under the interest rate swap or credit default swap less the obligations of the Fund under such offsetting interest rate swap or credit default swap;

c) a combination of the positions referred to in clauses a) and b) that is sufficient, without recourse to other assets of the Fund, to enable the Fund to satisfy its obligations under the interest rate swap or credit default swap.

(v) each of the Funds shall disclose the nature and terms of this relief in the Fund's prospectus under the Investment Strategies section and in the Fund's annual information form.

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

### 2.1.11 Guardian Group of Funds Ltd. et al. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – certain mutual funds granted exemptions from National Instrument 81-102 Mutual Funds to engage in short selling of securities up to 10% of net assets, subject to certain conditions and requirements- future oriented relief granted as well.

**Rules Cited**

National Instrument 81-102 Mutual Funds , subsections 2.6(a) and (c), 6.1(1) and section 19.1.

**July 4, 2007**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**GUARDIAN GROUP OF FUNDS LTD.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**THE FUNDS LISTED IN SCHEDULE "A"**
**(the Existing Funds)**

**MRRS Decision Document**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer, on behalf of the Existing Funds and each mutual fund hereafter created and managed by the Filer or any of the affiliates of the Filer (the Future Funds, and together with the Existing Funds, the Funds), for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Funds from the following requirements of the Legislation, subject to certain terms and conditions:

(a) the requirement contained in subsection 2.6(a) of National Instrument 81-102 Mutual Funds (NI 81-102) prohibiting a mutual fund from providing a security interest over a mutual fund's assets;

(b) the requirement contained in subsection 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(c) the requirement contained in subsection 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing any part of a mutual fund's assets with an entity other than the mutual fund's custodian.

Paragraphs (a), (b) and (c) together shall be referred to as the Requested Relief.

Under the Mutual Reliance Review System (MRRS) for Exemption Applications:

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

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

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation established under the laws of Ontario and is the trustee and manager of the Existing Funds.

2. Each Fund is or will be an open-end mutual fund trust or a class of shares of a mutual fund corporation established under the laws of the Province of Ontario of which the Filer, or an affiliate of the Filer, is or will be the manager.

3. Each Fund is or will be a reporting issuer in all of the provinces and territories of Canada and distributes or will distribute securities under a simplified prospectus and annual information form and be otherwise subject to NI 81-102.

4. Except for specific exemptions or approvals granted by the relevant Decision Makers, the investment practices of each Fund will comply in all respects with the requirements of Part 2 of NI 81-102.

5. The Filer proposes that each Fund be authorized to engage in a limited, prudent and disciplined amount of short selling. The Filer is of the view that the Funds could benefit from the implementation and execution of a controlled and limited short selling strategy. This strategy would complement the Funds' primary discipline of buying securities with the expectation that they will appreciate in market value.

6. Short sales will be made consistent with each Fund's investment objectives.

7. In order to effect a short sale, a Fund will borrow securities from either its custodian or a dealer (in either case, the "Borrowing Agent"), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

8. Each Fund will implement the following controls when conducting a short sale:

   (a) securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

   (b) the short sale will be effected through market facilities through which the securities sold short are normally bought and sold;

   (c) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

   (d) the securities sold short will be liquid securities that:

      (i) are listed and posted for trading on a stock exchange; and

         (A) the issuer of the security has a market capitalization of not less than CDN $300 million, or the equivalent thereof, of such security at the time the short sale is effected; or

         (B) the Fund has pre-arranged to borrow for the purpose of such sale; or

      (ii) are bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;

(e) at the time securities of a particular issuer are sold short:

(i) the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the total net assets of the Fund; and

(ii) the Fund will place a "stop-loss" order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the Manager may determine) of the price at which the securities were sold short;

(f) the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction;

(g) the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security;

(h) the Fund will develop written policies and procedures for the conduct of short sales prior to conducting any short sales; and

(i) the Fund will provide disclosure in its prospectus of the short selling strategies and the details of this exemptive relief prior to implementing the short selling strategy.

**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 in respect of each Fund:

1. the aggregate market value of all securities sold short by the Fund will not exceed 10% of the net assets of the Fund on a daily marked-to-market basis;

2. the Fund will hold "cash cover" (as defined in NI 81-102) in an amount, including the Fund assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by the Fund on a daily marked-to-market basis;

3. no proceeds from short sales by the Fund will be used by the Fund to purchase long positions in securities other than cash cover;

4. the Fund will maintain appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records;

5. any short sales made by the Fund will be subject to compliance with the investment objectives of the Fund;

6. the Requested Relief will not apply to a Fund that is classified as a money market fund or a short-term income fund;

7. for short sale transactions in Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;

8. for short sale transactions outside of Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall:

(a) be a member of a stock exchange and, as a result, be subject to a regulatory audit; and

(b) have a net worth in excess of the equivalent of $50 million determined from its most recent audited financial statements that have been made public;

9. except where the Borrowing Agent is the Fund's custodian, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale transactions of the Fund, exceed 10% of the total assets of the Fund, taken at market value as at the time of the deposit;

10. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

11. prior to conducting any short sales, the Fund discloses in its simplified prospectus a description of: (i) short selling, (ii) how the Fund intends to engage in short selling, (iii) the risks associated with short selling, and (iv) in the Investment

Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief;

12. prior to conducting any short sales, the Fund discloses in its annual information form the following information:

    (a) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

    (b) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors of the Manager in the risk management process;

    (c) whether there are trading limits or other controls on short selling in place and who is responsible for authorizing the trading and placing limits or other controls on the trading;

    (d) whether there are individuals or groups that monitor the risks independent of those who trade; and

    (e) whether risk measurement procedures or simulations are used to test the portfolio under stress conditions;

13. prior to conducting any short sales, the Fund has provided to its securityholders not less than 60 days' written notice that discloses the Fund's intent to begin short selling transactions and the disclosure required in the Fund's simplified prospectus and annual information form as outlined in paragraphs 11 and 12 above, or the Fund's initial simplified prospectus and annual information form and each renewal thereof has included such disclosure; and

14. the Requested Relief shall terminate upon the coming into force of any legislation or rule of the Decision Makers dealing with matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

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

**SCHEDULE A**

GGOF CANADIAN BOND FUND
GGOF FLOATING RATE INCOME FUND
GGOF GLOBAL BOND FUND
GGOF HIGH YIELD BOND FUND
GGOF MONTHLY DIVIDEND FUND LTD.
GGOF MONTHLY HIGH INCOME FUND
GGOF MONTHLY HIGH INCOME FUND II
GGOF AMERICAN EQUITY FUND LTD.
GGOF CANADIAN GROWTH FUND LTD.
GGOF CANADIAN LARGE CAP EQUITY FUND
GGOF DIVIDEND GROWTH FUND
GGOF EMERGING MARKETS FUND
GGOF ENTERPRISE FUND
GGOF EUROPEAN EQUITY FUND
GGOF GLOBAL ABSOLUTE RETURN FUND
GGOF GLOBAL DIVIDEND GROWTH FUND
GGOF GLOBAL EQUITY FUND
GGOF GLOBAL REAL ESTATE FUND
GGOF GLOBAL SMALL CAP FUND
GGOF GLOBAL TECHNOLOGY FUND
GGOF JAPANESE EQUITY FUND
GGOF RESOURCE FUND
GGOF ASIAN GROWTH AND INCOME FUND
GGOF CANADIAN BALANCED FUND
GGOF CANADIAN DIVERSIFIED MONTHLY INCOME FUND
GGOF GLOBAL DIVERSIFIED FUND
GGOF SMALL CAP GROWTH AND INCOME FUND
GGOF U.S. DIVERSIFIED MONTHLY INCOME FUND
GGOF INCOME SOLUTION
GGOF CONSERVATIVE SOLUTION
GGOF BALANCED SOLUTION
GGOF GROWTH SOLUTION
GGOF AGGRESSIVE GROWTH SOLUTION

### 2.1.12 Osprey Media Income Fund - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – OSC Rule 61-501 - going-private transaction - Rule 61-501 requires sending of information circular and holding of meeting in connection with a going-private transaction - target's declaration of trust provides that a resolution in writing executed by the requisite percentage of the outstanding units is valid and binding as if such voting rights had been exercised in favour of such resolution at a meeting of unitholders - going-private transaction to be subject to minority approval, calculated in accordance with section 8.2 of Rule 61-501 - relief granted from requirement that information circular be sent and meeting be held

**Applicable Ontario Statutory Provisions**

OSC Rule 61-501 Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions , ss. 4.2 and 9.1.

**July 3, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**QUÉBEC AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF**
**THE TAKE-OVER BID FOR**
**OSPREY MEDIA INCOME FUND BY**
**4411986 CANADA INC.,**
**A WHOLLY-OWNED SUBSIDIARY**
**OF QUEBECOR MEDIA INC.**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of Quebec and Ontario (the "**Jurisdictions**") has received an application from 4411986 Canada Inc. (the "**Applicant**"), a wholly-owned subsidiary of Quebecor Media Inc. ("**Quebecor Media**"), in connection with a take-over bid (the "**Offer**") for Osprey Media Income Fund ("**Osprey**"), for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that the requirements of the Legislation that:

(1) a Compulsory Acquisition or Subsequent Acquisition Transaction (each as defined below), as applicable, be approved at a meeting of the unitholders of Osprey (the "**Unitholders**"); and

(2) an information circular be sent to the Unitholders in connection with either a Compulsory Acquisition or Subsequent Acquisition Transaction, as applicable;

be waived (collectively, the "**Requested Relief**").

Under the Mutual Reliance Review System ("**MRRS**") for Exemptive Relief Applications:

(a) the *Autorité des marchés financiers* is the principal regulator for this application; and

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

**Interpretation**

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

**Representations**

This decision is based on the following representations by the Applicant:

1. The Applicant exists under the *Canada Business Corporations Act*. The Applicant has not carried on any activities prior to the date of the Circular (as defined below), other than those in respect of its formation and relating to the entering into an acquisition and support agreement with Osprey and lock-up agreements with certain Unitholders and the making of the Offer. The Applicant's registered office is located at 612 St. Jacques Street, Montréal, Québec, Canada H3C 4M8. The Applicant is not a reporting issuer. The Applicant is a wholly-owned subsidiary of Quebecor Media, a private company based in Montréal, Québec. Quebecor Media is held, directly or indirectly, at 54.7% by Quebecor Inc. ("**Quebecor**"), a publicly-traded communications holding company, and 45.3% by CDP Capital d'Amérique Investissements Inc. ("**CDP Capital**"). Quebecor's primary assets are its interests in Quebecor Media and in Quebecor World Inc., one of the world's largest commercial printers. CDP Capital is a wholly owned subsidiary of *Caisse de dépôt et placement du Québec*, Canada's largest pension fund. Both Quebecor and CDP Capital are based in Montréal, Québec.

2. Osprey is an unincorporated, limited purpose trust established under the laws of the Province of Ontario to invest in the newspaper industry through its ownership of all of the outstanding limited partnership units of Osprey Media L.P., a Manitoba limited partnership which operates the Osprey newspaper business. Osprey was established by a declaration of trust dated

January 1, 2004, as amended and restated as of January 1, 2006 (the "**Declaration of Trust**"). The head office of the Fund is located at 100 Renfrew Drive, Suite 110, Markham, Ontario L3R 9R6. Osprey is a reporting issuer in all of the provinces of Canada and all the issued and outstanding units of Osprey (the "**Units**") are listed and posted for trading on the Toronto Stock Exchange under the symbol "OSP.UN".

3. The Units are held by CDS Clearing and Depository Services Inc. in book-entry only form.

4. Pursuant to the take-over bid circular dated June 13, 2007 (the "**Circular**") mailed to the Unitholders, in connection with the Offer:

   (a) the Offer is for all of the outstanding Units at a price of $7.25 in cash per Unit;

   (b) one of the conditions of the Offer is that the number of Units (including the Units held at the date of the expiry of the Offer by or on behalf of the Applicant and any of its affiliates) representing at least 66⅔% of the outstanding Units shall have been validly deposited under the Offer and not withdrawn at the expiry of the Offer;

   (c) if the conditions to the Offer are satisfied (or waived by the Applicant) and the Applicant takes up and pays for the Units deposited pursuant to the Offer, the Applicant may proceed with a compulsory acquisition of the Units not deposited to the Offer (a "**Compulsory Acquisition**") as permitted by Osprey's Declaration of Trust for the same consideration per Unit as was paid under the Offer, if within 120 days after the date of the Offer, the Offer is accepted by Unitholders holding not less than 90% of the Units (other than Units held at the date of the Offer by or on behalf of the Applicant or an affiliate or an associate of the Applicant or associate or affiliates of the Applicant or persons acting jointly or in concert with the Applicant);

   (d) in connection with either a Compulsory Acquisition, if available and if the Applicant elects to proceed thereunder, or a Subsequent Acquisition Transaction (as defined below), the Applicant currently intends to amend the Declaration of Trust by the Written Resolution (as defined below) to provide that dissenting offerees will be deemed to have elected to transfer and to have transferred their Units to an offeror immediately on the giving of the offeror's notice prescribed by the Declaration of Trust notifying dissenting offerees that, among other things, the offeror is entitled to acquire their Units by way of Compulsory Acquisition or Subsequent Acquisition Transaction, as applicable (as opposed to the 20 days after sending of an offeror's notice, as currently provided) (the "**Notice Amendment**");

   (e) if a Compulsory Acquisition as permitted under the Declaration of Trust is not available to the Applicant or the Applicant elects not to proceed under those provisions, the Applicant currently intends to acquire the Units not deposited to the Offer by:

      (i) causing the Declaration of Trust to be amended as permitted pursuant to its terms (the "**Threshold Amendment**") to provide that a Compulsory Acquisition may be effected if the Applicant and its affiliates, after take-up of and payment for the Units deposited under the Offer, hold not less than 66⅔% of the Units or to make such other amendment as is necessary and permitted under the Declaration of Trust, in order to provide for the acquisition of the Units not deposited to the Offer in each case at the same price as the price paid under the Offer (the acquisition following such Threshold Amendment being referred to herein as a "**Subsequent Acquisition Transaction**"); and

      (ii) proceeding with the Subsequent Acquisition Transaction in respect of the Units not deposited to the Offer as permitted by the Declaration of Trust, as so amended;

   (f) in order to effect either a Compulsory Acquisition, if available and if the Applicant elects to proceed thereunder, or a Subsequent Acquisition Transaction in accordance with the foregoing, rather than seeking the Unitholders' approval at a special meeting of the Unitholders to be called for such purpose, the Applicant intends to rely on section 12.10 of the Declaration of Trust, which specifies that a resolution signed in writing by the Unitholders holding a proportion of all the outstanding votes equal to the proportion of votes required to vote in favour thereof at a meeting of the Unitholders to

approve that resolution is as valid as if it had been passed at a meeting of the Unitholders (the "**Written Resolution**"); which Written Resolution will approve, among other things, the Threshold Amendment and the Notice Amendment and any Compulsory Acquisition or Subsequent Acquisition Transaction undertaken in accordance therewith, as applicable; and

(g) if the Applicant is unable to effect either the Compulsory Acquisition or the Subsequent Acquisition Transaction in the manner described above, the Applicant reserves the right, to the extent permitted by applicable law and subject to the terms and conditions of the Acquisition and Support Agreement made as of May 31, 2007 among the Applicant, Quebecor Media and Osprey (a copy of which was filed on SEDAR on June 6, 2007), to (i) purchase additional Units in the open market or in privately negotiated transactions, in another take-over bid or exchange offer or otherwise or from Osprey, or (ii) take no further action to acquire additional Units. Alternatively, the Applicant may sell or otherwise dispose of any or all Units acquired pursuant to the Offer.

5. Notwithstanding Section 12.10 of the Declaration of Trust, in certain circumstances the Legislation requires that the Compulsory Acquisition or the Subsequent Acquisition Transaction, as applicable, be approved at a meeting of Unitholders called for that purpose.

6. To effect either a Compulsory Acquisition or Subsequent Acquisition Transaction, as applicable, the Applicant will obtain minority approval, as that term is defined in the Legislation, calculated in accordance with the terms of Section 8.2 of Regulation Q-27 — *Respecting Protection of Minority Securityholders in the Course of Certain Transactions*, ("**Regulation Q-27**") and Section 8.2 of Ontario Securities Commission Rule 61-501 — *Insider Bids, Issuer Bids, Business Combination and Related Party Transactions* (the "**Minority Approval**"), albeit not at a meeting of Unitholders, but by Written Resolution.

7. The Circular provided to Unitholders in connection with the Offer contains all disclosure required by applicable securities laws, including without limitation the take-over bid provisions and form requirements of the securities legislation in the Jurisdictions and the provisions of Regulation Q-27 relating to the disclosure required to be included in information circulars distributed in respect of going private transactions.

**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 Minority Approval shall have been obtained, albeit not at a meeting of Unitholders, but by Written Resolution.

Josée Deslauriers
Directrice des marchés des capitaux
Autorité des marchés financiers

### 2.1.13 Guardian Group of Funds Ltd. et al. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – certain mutual funds granted exemptions from National Instrument 81-102 Mutual Funds to engage in short selling of securities up to 10% of net assets, subject to certain conditions and requirements- future oriented relief granted as well.

**Rules Cited**

National Instrument 81-102 Mutual Funds, subsections 2.6(a) and (c), 6.1(1) and section 19.1.

**July 4, 2007**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**GUARDIAN GROUP OF FUNDS LTD.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**THE FUNDS LISTED IN SCHEDULE "A"**
**(the Existing Funds)**

**MRRS Decision Document**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer, on behalf of the Existing Funds and each mutual fund hereafter created and managed by the Filer or any of the affiliates of the Filer (the Future Funds, and together with the Existing Funds, the Funds), for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Funds from the following requirements of the Legislation, subject to certain terms and conditions:

(a) the requirement contained in subsection 2.6(a) of National Instrument 81-102 Mutual Funds (NI 81-102) prohibiting a mutual fund from providing a security interest over a mutual fund's assets;

(b) the requirement contained in subsection 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(c) the requirement contained in subsection 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing any part of a mutual fund's assets with an entity other than the mutual fund's custodian.

Paragraphs (a), (b) and (c) together shall be referred to as the Requested Relief.

Under the Mutual Reliance Review System (MRRS) for Exemption Applications:

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

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

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation established under the laws of Ontario and is the trustee and manager of the Existing Funds.

2. Each Fund is or will be an open-end mutual fund trust or a class of shares of a mutual fund corporation established under the laws of the Province of Ontario of which the Filer, or an affiliate of the Filer, is or will be the manager.

3. Each Fund is or will be a reporting issuer in all of the provinces and territories of Canada and distributes or will distribute securities under a simplified prospectus and annual information form and be otherwise subject to NI 81-102.

4. Except for specific exemptions or approvals granted by the relevant Decision Makers, the investment practices of each Fund will comply in all respects with the requirements of Part 2 of NI 81-102.

5. The Filer proposes that each Fund be authorized to engage in a limited, prudent and disciplined amount of short selling. The Filer is of the view that the Funds could benefit from the implementation and execution of a controlled and limited short selling strategy. This strategy would complement the Funds' primary discipline of buying securities with the expectation that they will appreciate in market value.

6. Short sales will be made consistent with each Fund's investment objectives.

7. In order to effect a short sale, a Fund will borrow securities from either its custodian or a dealer (in either case, the "Borrowing Agent"), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

8. Each Fund will implement the following controls when conducting a short sale:

   (a) securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

   (b) the short sale will be effected through market facilities through which the securities sold short are normally bought and sold;

   (c) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

   (d) the securities sold short will be liquid securities that:

      (i) are listed and posted for trading on a stock exchange; and

         (A) the issuer of the security has a market capitalization of not less than CDN $300 million, or the equivalent thereof, of such security at the time the short sale is effected; or

         (B) the Fund has pre-arranged to borrow for the purpose of such sale; or

      (ii) are bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;

   (e) at the time securities of a particular issuer are sold short:

      (i) the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the total net assets of the Fund; and

      (ii) the Fund will place a "stop-loss" order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the Manager may determine) of the price at which the securities were sold short;

   (f) the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction;

   (g) the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security;

   (h) the Fund will develop written policies and procedures for the conduct of short sales prior to conducting any short sales; and

   (i) the Fund will provide disclosure in its prospectus of the short selling strategies and the details of this exemptive relief prior to implementing the short selling strategy.

**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 in respect of each Fund:

1. the aggregate market value of all securities sold short by the Fund will not exceed 10% of the net assets of the Fund on a daily marked-to-market basis;

2. the Fund will hold "cash cover" (as defined in NI 81-102) in an amount, including the Fund assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at

least 150% of the aggregate market value of all securities sold short by the Fund on a daily marked-to-market basis;

3. no proceeds from short sales by the Fund will be used by the Fund to purchase long positions in securities other than cash cover;

4. the Fund will maintain appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records;

5. any short sales made by the Fund will be subject to compliance with the investment objectives of the Fund;

6. the Requested Relief will not apply to a Fund that is classified as a money market fund or a short-term income fund;

7. for short sale transactions in Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;

8. for short sale transactions outside of Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall:

   (a) be a member of a stock exchange and, as a result, be subject to a regulatory audit; and

   (b) have a net worth in excess of the equivalent of $50 million determined from its most recent audited financial statements that have been made public;

9. except where the Borrowing Agent is the Fund's custodian, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale transactions of the Fund, exceed 10% of the total assets of the Fund, taken at market value as at the time of the deposit;

10. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

11. prior to conducting any short sales, the Fund discloses in its simplified prospectus a description of: (i) short selling, (ii) how the Fund intends to engage in short selling, (iii) the risks associated with short selling, and (iv) in the Investment Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief;

12. prior to conducting any short sales, the Fund discloses in its annual information form the following information:

   (a) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

   (b) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors of the Manager in the risk management process;

   (c) whether there are trading limits or other controls on short selling in place and who is responsible for authorizing the trading and placing limits or other controls on the trading;

   (d) whether there are individuals or groups that monitor the risks independent of those who trade; and

   (e) whether risk measurement procedures or simulations are used to test the portfolio under stress conditions;

13. prior to conducting any short sales, the Fund has provided to its securityholders not less than 60 days' written notice that discloses the Fund's intent to begin short selling transactions and the disclosure required in the Fund's simplified prospectus and annual information form as outlined in paragraphs 11 and 12 above, or the Fund's initial simplified prospectus and annual information form and each renewal thereof has included such disclosure; and

14. the Requested Relief shall terminate upon the coming into force of any legislation or rule of the Decision Makers dealing with matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

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

**SCHEDULE A**

GGOF CANADIAN BOND FUND
GGOF FLOATING RATE INCOME FUND
GGOF GLOBAL BOND FUND
GGOF HIGH YIELD BOND FUND
GGOF MONTHLY DIVIDEND FUND LTD.
GGOF MONTHLY HIGH INCOME FUND
GGOF MONTHLY HIGH INCOME FUND II
GGOF AMERICAN EQUITY FUND LTD.
GGOF CANADIAN GROWTH FUND LTD.
GGOF CANADIAN LARGE CAP EQUITY FUND
GGOF DIVIDEND GROWTH FUND
GGOF EMERGING MARKETS FUND
GGOF ENTERPRISE FUND
GGOF EUROPEAN EQUITY FUND
GGOF GLOBAL ABSOLUTE RETURN FUND
GGOF GLOBAL DIVIDEND GROWTH FUND
GGOF GLOBAL EQUITY FUND
GGOF GLOBAL REAL ESTATE FUND
GGOF GLOBAL SMALL CAP FUND
GGOF GLOBAL TECHNOLOGY FUND
GGOF JAPANESE EQUITY FUND
GGOF RESOURCE FUND
GGOF ASIAN GROWTH AND INCOME FUND
GGOF CANADIAN BALANCED FUND
GGOF CANADIAN DIVERSIFIED MONTHLY INCOME FUND
GGOF GLOBAL DIVERSIFIED FUND
GGOF SMALL CAP GROWTH AND INCOME FUND
GGOF U.S. DIVERSIFIED MONTHLY INCOME FUND
GGOF INCOME SOLUTION
GGOF CONSERVATIVE SOLUTION
GGOF BALANCED SOLUTION
GGOF GROWTH SOLUTION
GGOF AGGRESSIVE GROWTH SOLUTION

### 2.1.14 InterRent Real Estate Investment Trust - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 Continuous Disclosure Obligations – Issuer completed a significant acquisition of multiple properties – Issuer cannot reconstruct historical accounting records of acquired business and cannot produce financial statements for acquired business for business acquisition report – Issuer granted relief from the requirement to include certain financial statements, subject to conditions

**Applicable Legislative Provisions**

National Instrument 51-102 – Continuous Disclosure Obligations, Part 8

**July 11, 2007**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**INTERRENT REAL ESTATE INVESTMENT TRUST**
**(the Filer)**

**MRRS Decision Document**

**Background**

The local securities regulatory authority or regulator (collectively, the **Decision Makers**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements under the Legislation that (a) comparative annual financial statements for 614 Lake St. in St. Catharines, Ontario (the **Lake Street Property**) for the period ended December 31, 2006 include a comparative period for the year ended December 31, 2005 and (b) certain financial statements prescribed by section 8.4 of National Instrument 51-102 (the **Continuous Disclosure Requirements**) be included in the business acquisition report (the **BAR**) prepared by the Filer in connection with the Filer's acquisition of interests in 11 separate, multi-residential real estate properties do not apply to the Filer (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the **System**):

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for the 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 an unincorporated open-ended real estate trust established under the laws of the Province of Ontario by a declaration of trust dated October 10, 2006.

2. The Filer's head office is located at The Exchange Tower, Box 427, Suite 1800, 130 King Street West, Toronto, Ontario, M5X 1E3.

3. The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and, to the best of its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder.

4. On January 15, 2007, the Filer announced that it had entered into purchase agreements relating to the potential acquisition of 22 properties for an aggregate purchase price of approximately $100 million. All but two of such intended 22 acquisitions are/were subject to separate, purchase and sale agreements (the **Agreements**) between the Filer and 20 individual, *bona fide* arm's length vendors, who are not, to the best of the Filer's knowledge, related to any other vendor. Of the 22 potential acquisitions, the Filer has closed an aggregate of 19 properties (the **Acquisitions**) for approximately $89.3 million, the last two of which closed on April 25, 2007 representing approximately $17.5 million or 20% of the value of the Acquisitions. The Filer is uncertain as to the closing date of one of the properties, 51-59 Campbell Ct. in Stratford, Ontario. In addition, two properties are no longer under immediate consideration, namely, 78-76 Dalhousie Avenue in Brantford, Ontario and 118 St. Josephs Drive in Hamilton, Ontario.

5. The Filer has financed the Acquisitions through a combination of the assumption of existing or new mortgage financing of approximately $56 million and cash generated from the issuance of new trust units of the Filer from treasury pursuant a $50,000,500 short form prospectus offering, which closed on February 13, 2007 as well as the over-allotment option for gross proceeds of $2,667,500, which closed on March 13, 2007. The date of the Filer's (final) short form prospectus (the **Prospectus**) is February 6, 2007.

6. The trust units of the Filer (**Units**) were formerly listed and posted on the TSX Venture Exchange under the symbol IIP.UN. On April 4, 2007, the Filer received conditional approval of the Toronto Stock Exchange (the **TSX**) to list its Units on the TSX, subject to the Filer satisfying the listing conditions of the TSX. On April 25, 2007, the Units were delisted from the TSXV and subsequently listed on the TSX, under the same ticker symbol. As at June 20, 2007, the Filer had 15,002,031 Units issued and outstanding, as well as 774,063 Class B units of InterRent Holdings Limited Partnership, which are exchangeable on a one-for-one basis for Units.

7. The Acquisitions are a "significant acquisition" of the Filer for the purposes of NI 51-102, requiring the Filer to file a BAR within 75 days of the completion of the Acquisitions pursuant to section 8.2 of NI 51-102. The Filer intends to file its BAR on or before July 5, 2007.

8. Pursuant to section 8.4 of NI 51-102, the BAR for the Acquisitions must be accompanied by certain financial statements, including as applicable, (i) annual financial statements for each of the two most recently completed financial years of the business acquired ended more than 45 days before the date of acquisition, the most current of which is to be audited; (ii) unaudited interim financial statements for the most recently completed interim period of the business acquired that ended before the date of acquisition together with a comparative interim financial statement for the comparative period in the preceding year of the business acquired; (iii) a *pro forma* balance sheet of the Filer as at the date of the most recent balance sheet of the Filer that gives effect to the Acquisition as if it had taken place at the date of the *pro forma* balance sheet; and (iv) *pro forma* income statements for the Filer for the most recently completed financial year of the Filer for which financial statements are required to have been issued and the most recently completed interim period of the Filer for which the financial statements are required to have been issued that gives effect to the acquisition as if it had taken place at the beginning of the most recently completed financial year (the **BAR Financial Statements**).

9. Subject to the exceptions noted below, the Filer proposes to file annual financial statements (the **Annual Statements**), in accordance with Part 8 of NI 51-102, only for those Acquisitions, that exceed 5% of the aggregate value of the Acquisitions (the

**Material Acquisitions**), or eight properties in total. The Filer will file *pro forma* financial statements giving effect to the Material Acquisitions as at and for the period ended December 31, 2006. The Filer has included a financial forecast (the **Alternative Financial Disclosure**) in the Prospectus, which provides investors with a prospective *pro forma* view of the impact of the Acquisitions on the Filer. The Filer will provide the Alternative Financial Disclosure in its BAR for the Acquisitions.

10. For the 11 properties that fall below the 5% of the aggregate value of the Acquisitions, only Alternative Financial Disclosure will be provided in its BAR.

11. The Filer is unable to produce any financial statements for one of the Material Acquisitions, the Lake Street Property, for the year ended December 31, 2005. The Filer represents, and will disclose in its BAR, that it has exhausted every reasonable effort to obtain access to the historical accounting records from the previous owners of the property, who were individuals, for the year ended December 31, 2005, necessary to produce these financial statements but such efforts were unsuccessful. The vendor from whom the property was purchased was not in possession of historical accounting records for fiscal 2005 when it purchased the property. The previous owners who owned the property in fiscal 2005, left Ontario shortly after the sale and subsequently ceased communication with the vendor from whom the Filer purchased the property.

12. The Filer provided forecasted net income summary statements for each of the Acquisitions, including the Lake Street Property, in its Prospectus and will provide this information with the Alternative Financial Disclosure and the audited financial statements for the year ended 2006 for Lake Street Property in its BAR.

**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 Maker under the Legislation is that the Requested Relief is granted such that the BAR Financial Statements will be provided only for Material Acquisitions with the BAR to be filed by the Filer for the Acquisitions provided that Alternative Financial Disclosure be provided for such Acquisitions.

"Lisa Enright"
Assistant Manager, Corporate Finance
Ontario Securities Commission

### 2.1.15 Energy Metals Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 Continuous Disclosure Obligations- exemption from the requirement in item 14.2 of Form 51-102F5 Information Circular to include in an information circular the disclosure as prescribed by the form of prospectus, other than the short form prospectus, that an entity would be eligible to use for a distribution of securities - information circular to be circulated in connection with an arrangement - alternate disclosure will be provided about the entity that will comply with the short form prospectus rule - information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole.

**Applicable Legislative Provisions**

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
Form 51-102F5 Information Circular, item 14.2.

**June 25, 2007**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA AND ONTARIO**
**(THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF**
**ENERGY METALS CORPORATION**
**(THE FILER)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation (the Legislation) of the Jurisdictions for an exemption from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (Form 51-102F5) to include in the Information Circular (defined below) for the Arrangement (defined below) the disclosure about Uranium One Inc. (Uranium One) (including financial statements) prescribed by the form of prospectus, other than a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101), that Uranium One would be eligible to use for a distribution of securities (the Requested Relief).

**Application of Principal Regulator System**

Under Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) and the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the British Columbia Securities Commission is the principal regulator for the Filer;

(b) the Filer is relying on Part 3 of MI 11-101 in Alberta and Quebec; and

(c) this 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 otherwise defined in this decision.

**Representations**

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

1. the Filer is a corporation organized under the laws of British Columbia with its head office in Vancouver, British Columbia;

2. the Filer has an authorized share capital consisting of an unlimited number of common shares;

3. the Filer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario and has been a reporting issuer for over three years;

4. the Filer is listed on the Toronto Stock Exchange and the New York Stock Exchange Arca market;

5. the Filer is not in default of any requirements of the applicable securities laws in Canada;

6. the Filer is a Canadian-based uranium and gold resource company;

7. the Filer satisfies the basic qualification criteria as set out in section 2.2 of NI 44-101 (in particular, the Filer filed on September 28, 2006 its annual information form for the year ended June 30, 2006 and its annual financial statements for the year ended June 30, 2006 and related management's discussion and analysis);

8. the Filer has a current AIF and current annual financial statements as defined in section 1.1 of NI 44-101;

9. Uranium One is a corporation existing under the laws of Canada with its head office in Toronto, Ontario;

10. Uranium One has an authorized share capital consisting of an unlimited number of common shares;

11. Uranium One is a reporting issuer or the equivalent thereof in each of the provinces of Canada and has been a reporting issuer for over three years;

12. Uranium One has filed the notice required by section 2.8 of NI 44-101 and such notice has not been withdrawn;

13. Uranium One has a primary listing on the Toronto Stock Exchange and a secondary listing on the Johannesburg stock exchange;

14. Uranium One is a Canadian uranium and gold resource company;

15. Uranium One, in its current corporate form, is the result of two significant transactions; the first transaction was a merger (the Merger) between Uranium One (then known as Southern Cross Resources Inc. – Southern Cross) and Aflease Gold and Uranium Resources Limited of South Africa (Aflease); the Merger was effected on December 27, 2005 as a scheme of arrangement under South African law, whereby Southern Cross acquired all of the issued and outstanding shares of Aflease in exchange for common shares of Southern Cross; the second transaction was a plan of arrangement under which Uranium One acquired UrAsia Energy Ltd. (UrAsia), with that transaction being accounted for as a reverse takeover as a result of the shareholders of UrAsia acquiring control of Uranium One;

16. Uranium One satisfies the basic qualification criteria as set out in section 2.2 of NI 44-101 (in particular, Uranium One filed on March 29, 2007 its annual information form for the year ended December 31, 2006 and its annual financial statements for the year ended December 31, 2006 and related management's discussion and analysis);

17. Uranium One has a current AIF and current annual financial statements as defined in section 1.1 of NI 44-101;

18. on June 3, 2007, the Filer and Uranium One entered into an arrangement agreement whereby Uranium One will acquire all of the issued and outstanding securities of the Filer under a plan of arrangement (the Arrangement) under Section 288 of the British Columbia Business Corporations Act (the Act);

19. the Arrangement will result in:

    (a) the shareholders of the Filer receiving, in exchange for each common share in the

capital of the Filer held by them, 1.15 Uranium One common shares; and

(b) the optionholders of the Filer receiving, in exchange for each option to acquire a common share in the capital of the Filer held by them, a replacement option entitling the optionholder to acquire common shares of Uranium One equal to the number of the Filer's common shares that are issuable upon the exercise of the option multiplied by 1.15, at an exercise price per share equal to the original exercise price divided by 1.15; and

(c) the obligation of the Filer to conditionally issue common shares to counterparties under certain contractual arrangements being replaced with an obligation to issue, for each common share of the Filer so issuable, 1.15 Uranium One common shares;

20. after the Arrangement, the Filer will be a wholly-owned subsidiary of Uranium One;

21. the Filer intends to prepare and mail an information circular (the Information Circular) for a special meeting of its affected securityholders to be held on or about July 31, 2007 for the purpose of approving the Arrangement (the Meeting);

22. Form 51-102F5 requires that the Information Circular contain, among other things, a detailed description of the Arrangement and disclosure (including financial statements) for Uranium One prescribed by the form of prospectus, other than a short form prospectus under NI 44-101, that Uranium One would be eligible to use for a distribution of securities in the Jurisdictions;

23. the form of prospectus, other than a short form prospectus under NI 44-101, that Uranium One would be eligible to use for a distribution of securities in the Jurisdictions is the form of prospectus is prescribed by Ontario Securities Commission Form 41-501F1 *Information Required in a Prospectus* (the Long Form Rules);

24. under the Long Form Rules, in providing disclosure for Uranium One, the Filer is required to include certain information relating to Aflease;

25. the Filer understands that some of the information relating to Aflease was not previously prepared because Aflease, as a South African corporation, was not required to do so;

26. the Information Circular will contain or incorporate by reference, among other things, a detailed description of the Arrangement and the disclosure (including financial statements) for Uranium One prescribed by Form 44-101F1 *Short Form Prospectus* (Form 44-101F1);

27. the Information Circular will incorporate by reference all documents of the type described in section 11.1 of Form 44-101F1 filed by Uranium One after the date of the Information Circular and before the date of the Meeting;

28. a compilation report will not be included in the Information Circular as part of the pro forma financial statements set out therein; and

29. the Information Circular will contain sufficient information for shareholders to make a reasoned decision about whether to approve the Arrangement.

**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 the Information Circular (and the documents incorporated by reference) contains the information about Uranium One required by Form 44-101F1 to be included or incorporated by reference in a short form prospectus.

"Martin Eady", CA
Director, Corporate Finance
British Columbia Securities Commission

### 2.1.16 TriStar Oil and Gas Ltd. and Real Resources Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 Continuous Disclosure Obligations- exemption from the requirement in item 14.2 of Form 51-102F5 Information Circular to include in an information circular the disclosure as prescribed by the form of prospectus, other than the short form prospectus, that an entity would be eligible to use for a distribution of securities - information circular to be circulated in connection with an arrangement - alternate disclosure will be provided about the entity that will comply with the short form prospectus rule - information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole.

**Applicable Legislative Provisions**

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
Form 51-102F5 Information Circular, item 14.2.

**Citation:** TriStar Oil & Gas Ltd., Real Resources Inc., 2007 ABASC 435

**June 28, 2007**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**TRISTAR OIL & GAS LTD. (TRISTAR)**
**AND REAL RESOURCES INC. (REAL)**

**MRRS DECISION DOCUMENT**

**Background**

1. The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from TriStar and Real for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that Tristar and Real be exempt from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**) to include in a joint information circular (the **Information Circular**) for the Arrangement (defined below) the disclosure about TriStar as prescribed by the form of prospectus, other than a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (the **Short Form Prospectus Rule**), that TriStar would be eligible to use for a distribution of securities (the **Long Form Prospectus Form**) provided that the Information Circular includes information about Tristar required by the Short Form Prospectus Rule.

**Application of Principal Regulator System**

2. Under Multilateral Instrument 11-101 *Principal Regulator System* (**MI 11-101**) and the Mutual Reliance Review System for Exemption Relief Applications:

   (a) the Alberta Securities Commission is the principal regulator for TriStar and Real;

   (b) TriStar and Real are relying on the exemption in Part 3 of MI 11-101 in all of the provinces in Canada except Alberta and Ontario; and

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

**Interpretation**

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

**Representations**

4. This decision is based on the following facts represented by the TriStar and Real:

   (a) Each of TriStar and Real is incorporated under the laws of the Province of Alberta and has its head office located in Calgary, Alberta.

   (b) The common shares of TriStar are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “TOG”.

   (c) The common shares of Real are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “RER”.

   (d) TriStar is a reporting issuer, where such status exists, in each of the provinces of Canada and has been a reporting issuer in at least one of these jurisdictions since on or about January 5, 2006.

   (e) Real is a reporting issuer, where such status exists, in each of the provinces of Canada and has been a reporting issuer

in at least one of these jurisdictions since at least January 1, 2006.

(f) TriStar is not in default of any of its obligations as a reporting issuer pursuant to the applicable securities legislation in any of the provinces in which it is a reporting issuer.

(g) Real is not in default of any of its obligations as a reporting issuer pursuant to the applicable securities legislation in any of the provinces in which it is a reporting issuer.

(h) Tristar satisfies the basic qualification criteria as set out in section 2.2 of the Short Form Prospectus Rule. In particular, Tristar filed on or about March 16, 2007 its annual information form for the year ended December 31, 2006, and filed on or about March 15, 2007 its annual financial statements for the year ended December 31, 2006 and related management's discussion and analysis.

(i) Tristar has a current AIF and current annual financial statements as defined in section 1.1 of the Short Form Prospectus Rule.

(j) TriStar has filed the notice required by section 2.8 of the Short Form Prospectus Rule and that notice has not been withdrawn.

(k) On May 22, 2007, TriStar and Real entered into an arrangement agreement pursuant to which TriStar and Real will combine pursuant to a Plan of Arrangement (the **Arrangement**) under the *Business Corporations Act* (Alberta) (the **ABCA**). Pursuant to the Arrangement, holders (**TriStar Shareholders**) of common shares of TriStar (**TriStar Shares**) will receive, for each TriStar Share, 0.4762 of a common share of Real (**Real Share**), and holders (**Real Shareholders**) of Real Shares will continue to hold one Real Share for each Real Share held prior to the Arrangement. Following the Arrangement, the name of Real Resources Inc. will be changed to "TriStar Oil and Gas Ltd.".

(l) Following the completion of the Arrangement, TriStar will be a wholly owned subsidiary of Real. The name of Real will be changed to "TriStar Oil & Gas Ltd." And the name of TriStar will be changed from "TriStar Oil & Gas Ltd." To another name that is yet to be determined. The arrangement agreement contains a covenant that the two companies will be amalgamated effective January 1, 2008.

(m) The Information Circular detailing the Arrangement is anticipated to be mailed to Real Shareholders and TriStar Shareholders on or about July 3, 2007 for meetings expected to take place on or about August 2, 2007. Closing of the Arrangement is expected to take place on or about August 3, 2007.

(n) Form 51-102F5 requires that the Information Circular contain, among other things, a detailed description of the Arrangement and disclosure (including financial statements) for Tristar prescribed by the form of prospectus, other than a short form prospectus under the Short Form Prospectus Rule, that Tristar would be eligible to use for a distribution of securities in the Jurisdictions.

(o) The form of prospectus other than a short form prospectus under the Short Form Prospectus Rule that Tristar would be eligible to use for a distribution of securities is the form of prospectus prescribed by Ontario Securities Commission Form 41-501F1 *Information Required in a Prospectus*.

(p) The Information Circular will include, among other things, a detailed description of the Arrangement and the disclosure (including financial statements) for Tristar prescribed by Form 44-101F1 – Short Form Prospectus (**Form 44-101F1**).

(q) The Information Circular will incorporate by reference all documents of the type described in item 11.1 of Form 44-101F1 filed by Tristar after the date of the Information Circular and before the date of the Meeting.

(r) The Information Circular will contain sufficient information for shareholders to make a reasoned decision about whether to approve the Arrangement.

**Decision**

5. The Decision Makers are satisfied that they each have jurisdiction to make this decision and that the relevant test contained under the Legislation has been met. The Decision of the Decision Makers is that Tristar and Real are exempt from the requirement under Item 14.2 of Form 51-102F5 to

include in the Information Circular for the Arrangement the disclosure about TriStar prescribed by the Long Form Prospectus Form provided that:

(a) at the time of filing of the Information Circular, Tristar satisfies the basic qualification criteria as set out in section 2.2 of the Short Form Prospectus Rule; and

(b) the Information Circular (and the documents incorporated by reference in the Information Circular) includes information about Tristar required by the Short Form Prospectus Rule to be included or incorporated by reference in a short form prospectus.

"Agnes Lau", CA
Associate Director, Corporate Finance
Alberta Securities Commission

## 2.2 Orders

### 2.2.1 CF Global Trading, LLC - s. 218 of the Regulation

**Headnote**

CF GLOBAL TRADING, LLC

Applicant for registration as limited market dealer exempted, pursuant to section 218 of the Regulation, from Canadian incorporation requirement in section 213 of the Regulation, subject to terms and conditions.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 26(3) and 53.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 213 and 218.

**July 6, 2007**

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

**AND**

**IN THE MATTER OF
R.R.O. 1990, REGULATION 1015, AS AMENDED
(THE REGULATION)**

**AND**

**IN THE MATTER OF
CF GLOBAL TRADING, LLC**

**ORDER
(Section 218 of the Regulation)**

**UPON** the application (the **Application**) of CF Global Trading, LLC, (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer (**LMD**);

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a limited liability company formed under the laws of the State of Delaware. The head office of the Applicant is located in Norwalk, Connecticut, U.S.A.

2. The Applicant is registered as a broker-dealer with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers in the United States.

3. The Applicant is not presently registered in any capacity under the Act. However, the Applicant is in the process of applying to the Commission for registration under the Act as a dealer in the category of limited market dealer (Non-Resident).

4. The Applicant's primary business activities are trading in securities, acting as agent, for institutional investors only. The Applicant is a privately-owned firm.

5. In Ontario, the Applicant intends to, among other things, market and sell to accredited investors and other exempt purchasers units, shares, limited partnership interests and other securities or funds that are primarily offered outside of Canada. The clients would include large institutional investors. These limited market activities may be undertaken directly, or in conjunction with or through another registered dealer, including providing and receiving referrals to and from such dealer.

6. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

7. The Applicant is not resident in Canada and does not require a separate Canadian company in order to carry out its proposed limited market dealer activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

8. Without the relief requested the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of limited market dealer as it is not a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

**AND UPON** being satisfied that to make this order would not be prejudicial to the public interest;

**IT IS ORDERED THAT**, pursuant to section 218 of the Regulation, and in connection with the registration of the Applicant as a dealer under the Act in the category of a LMD, section 213 of the Regulation shall not apply to the Applicant for a period of three years, provided that:

1. The Applicant appoints an agent for service of process in Ontario.

2. The Applicant shall provide to each client resident in Ontario a statement in writing disclosing the non-resident status of the Applicant, the Applicant's jurisdiction of residence, the name and address of the agent for service of process of the Applicant in Ontario, and the nature of risks to clients that legal rights may not be enforceable.

3. The Applicant will not change its agent for service of process in Ontario without giving the Ontario Securities Commission 30 days' prior notice of such change by filing a new Submission to Jurisdiction and Appointment of Agent for Service of Process.

4. The Applicant and each of its registered directors or officers irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.

5. The Applicant will not have custody of, or maintain customer accounts in relation to, securities, funds, and other assets of clients resident in Ontario.

6. The Applicant will inform the Director immediately upon the Applicant becoming aware:

   (a) that it has ceased to be registered in the United States as a broker-dealer;

   (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;

   (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority;

   (d) that the registration of its salespersons, officers, directors, or partners who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or

   (e) that any of its salespersons, officers, directors, or partners who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority in any Canadian or foreign jurisdiction.

7. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario,

including the cost of hiring a third party to perform a compliance review on behalf of the Commission.

8. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.

9. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client the Applicant shall, upon a request by the Commission:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the production of the books and records.

10. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.

11. The Applicant and each of its registered directors, officers, or partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure process or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.

12. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the giving of the evidence.

13. The Applicant will maintain appropriate registration and regulatory organization membership, in the jurisdiction of its principal operations, and if required, in its jurisdiction of residence.

"Wendell S. Wigle"

"Suresh Thakrar"

### 2.2.2 FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun - s. 127

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

**- AND -**

**IN THE MATTER OF**
**FACTORCORP INC.,**
**FACTORCORP FINANCIAL INC., AND**
**MARK TWERDUN**

**TEMPORARY ORDER**
**(Section 127)**

**WHEREAS** it appears to the Ontario Securities Commission (the "Commission") that:

1. FactorCorp Inc. ("FactorCorp") is an Ontario corporation registered under Ontario securities law as a Limited Market Dealer ("LMD").

2. FactorCorp Financial Inc. ("FactorCorp Financial") is an Ontario corporation that is not a reporting issuer and is not registered with the Commission.

3. Mark Twerdun ("Twerdun") is the controlling shareholder and sole director and officer of both FactorCorp and FactorCorp Financial.

4. FactorCorp Financial has raised approximately $50 million by issuing non-prospectus qualified debentures to approximately 500 Ontario investors over the last three to four years in a continuous distribution.

5. FactorCorp Financial pools the funds raised from the issuance of debentures and lends them to various sub-lenders who, in turn, lend them to various small to mid-sized businesses. Such loans are alleged by FactorCorp and FactorCorp Financial to be secured.

6. Investors purchased FactorCorp Financial debentures primarily through a registered mutual fund dealer and limited market dealer (the "Dealer"). FactorCorp debentures were sold pursuant to the accredited investor ("AI") exemption from the prospectus requirement of section 53 of the Ontario *Securities Act* (the "Act").

7. The Dealer has submitted significant redemption requests to FactorCorp/FactorCorp Financial on behalf of clients who did not qualify as AI's under securities law.

8. FactorCorp/FactorCorp Financial is not able to meet all outstanding requests for redemptions.

9. FactorCorp/FactorCorp Financial is/are considering alternatives for the restructuring of their business, operations and affairs.

10. It appears that the Respondents may have participated in or acquiesced to an illegal distribution of securities to Ontario investors contrary to section 53 of the Act and without appropriate registration, contrary to section 25 of the Act.

11. Staff believe that it is in the public interest that investor funds be protected and a monitor be put in place to review the business, operations and affairs of FactorCorp and FactorCorp Financial and to evaluate alternatives for their restructuring.

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

**AND WHEREAS**, pursuant to subsection 127(5) of the Act, the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest;

**AND WHEREAS** by Commission order made on April 4, 2007, pursuant to subsection 3.5(3) of the Act, each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Robert L. Shirriff, Harold P. Hands, Paul K. Bates and David L. Knight, acting alone, is authorized to make orders under section 127 of the Act.

**IT IS HEREBY ORDERED** that, pursuant to subsection 127(5) of the Act that:

(a) pursuant to paragraph 127(1)*2*, all trading in any securities by and of the respondents cease except that Twerdun is permitted to trade, in his name only, in securities that have not been issued by FactorCorp or FactorCorp Financial, for his own account or for the account of a registered retirement savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he has legal and beneficial ownership and interest; and

(b) pursuant to paragraph 127(1)*3* of the Act, all exemptions contained in Ontario securities law do not apply to the respondents; and

(c) pursuant to paragraph 127(1)*1* of the Act, the following terms and conditions are imposed on the registration of FactorCorp and Twerdun, effective immediately:

(i) Twerdun, FactorCorp and any company controlled, directly or indirectly, by Twerdun, and FactorCorp including but not limited to FactorCorp Financial, are prohibited from making redemptions and participating in or acquiescing to any act, directly or indirectly, in furtherance of a redemption of securities of FactorCorp and FactorCorp Financial;

(ii) Twerdun and FactorCorp are prohibited from transferring their controlling interest in any company including but not limited to FactorCorp Financial; and

(iii) Twerdun shall cause FactorCorp Financial to and FactorCorp shall retain a monitor (the "Monitor"), selected by the Commission, by 5:00 p.m. Eastern Time on July 10th, 2007. The Monitor's primary objective will be to review and oversee the business, operations and affairs of FactorCorp Financial, FactorCorp and any company controlled, directly or indirectly, by Twerdun, FactorCorp and FactorCorp Financial involved with the issuance of debentures and related proceeds. The Monitor shall be retained on terms to be established by the Commission.

**IT IS HEREBY ORDERED** that the above noted terms and conditions supplement and do not replace any other specific terms and conditions that currently apply to Twerdun and FactorCorp and Twerdun and FactorCorp continue to be subject to all applicable general terms, conditions and other requirements contained in the Act and any Regulations made thereunder; and

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

**DATED** at Toronto this 6th day of July, 2007.

"David Wilson"

**2.2.3 Norshield Asset Management (Canada) Ltd. et al.**

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

**AND**

**NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,
OLYMPUS UNITED GROUP INC.,
JOHN XANTHOUDAKIS,
DALE SMITH AND
PETER KEFALAS**

**ORDER**

**WHEREAS** on October 11, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Staff filed a Statement of Allegations with respect to this matter (the "Proceeding");

**AND WHEREAS** on March 30, 2007, the fourth appearance in Proceeding was ordered by the Commission to take place on July 5, 2007 at 11:30 a.m. at the offices the Commission;

**AND WHEREAS** since March 30, 2007, Staff have provided additional disclosure with respect to documents underlying the analysis of the Receiver, RSM Richter Inc. (“Richter”), in its sixth report (the "Sixth Report") issued on March 6, 2007 and approved by the Honourable Mr. Justice Campbell of the Ontario Superior Court (Commercial List) on March 7, 2007;

**AND WHEREAS** Staff are in the process of obtaining and reviewing a further category of documents underlying the analysis contained in the Sixth Report for the purposes of disclosure in the Proceeding;

**AND WHEREAS** the individual Respondents will require time to review any documents disclosed by Staff;

**AND WHEREAS** Staff and counsel for the individual Respondents will endeavour to address any outstanding disclosure issues in advance of September 17, 2007;

**AND WHEREAS** Staff and counsel for the individual Respondents consent to the making of this Order and the Commission has been advised that the Richter also consents to the making this Order;

**AND UPON** hearing the submissions from counsel for Staff and counsel to the individual Respondents;

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

**IT IS HEREBY ORDERED** that the next appearance with respect to this matter shall take place on September 17, 2007 at 10:00 a.m. at the offices of the Commission.

**DATED** at Toronto this 5th day of July, 2007

“Wendell S. Wigle”

“David L. Knight”

# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1 OSC Decisions, Orders and Rulings

### 3.1.1 Thomas Vincent Hinke - ss. 127 and 127.1

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

**AND**

**IN THE MATTER OF**
**THOMAS VINCENT HINKE**

**REASONS AND DECISION ON THE MERITS RENDERED ON FEBRUARY 14, 2007 AND REASONS AND DECISION REGARDING SANCTIONS AND COSTS**

**(Sections 127 and 127.1 of the Securities Act)**

| | | |
|---|---|---|
| **Hearing:** | February 14 and 28, 2007 | |
| **Panel:** | Wendell S. Wigle, Q.C. | - Commissioner (Chair of the Panel) |
| | David L. Knight, FCA | - Commissioner |
| **Counsel:** | Anne Sonnen | - For Staff of the Ontario Securities Commission |
| | Thomas Hinke | - For himself |

**REASONS AND DECISION ON THE MERITS RENDERED ON FEBRUARY 14, 2007 AND REASONS AND DECISION REGARDING SANCTIONS AND COSTS**

**A. Overview**

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it was in the public interest to make an order against Thomas Vincent Hinke ("Hinke").

[2] Staff of the Commission ("Staff") alleged that Hinke breached a Commission order and settlement agreement dated May 1, 2006, and that Hinke made false statements to Staff and to the Commission.

[3] During the course of this hearing, Hinke represented himself and did not retain counsel.

[4] We held a hearing on the merits on February 14, 2007. At the close of the hearing, we rendered our decision orally and found that Hinke engaged in conduct contrary to the public interest. When considering Hinke's admissions and the evidence and submissions presented by the parties, we found that Hinke breached the Commission order and settlement agreement dated May 1, 2006, and that Hinke made false statements to Staff and the Commission.

[5] On February 28, 2007, we considered evidence and submissions from Staff and Hinke as to appropriate sanctions and costs against Hinke.

[6] These are the reasons for our decision on the merits rendered orally on February 14, 2007, and for our decision regarding sanctions and costs.

**B. Background**

**i. The Respondent**

[7] Hinke is an individual residing in Ontario. During the period between December 1996 and December 2000, Hinke was the President and Chief Executive Officer of Thermal Energy International Inc. ("TEI"). TEI was incorporated pursuant to the laws of Ontario and is a reporting issuer, as defined in the Act.

**ii. History of the Proceedings Involving Hinke**

**(1) The First Settlement Agreement**

**(a) Conduct at Issue in the First Settlement Agreement**

[8] Hinke's conduct during the period between December 1996 and December 2000 contravened securities law and was contrary to the public interest.

[9] Indeed, from December 1996 to December 2000, Hinke was an insider of a reporting issuer by virtue of his position as an officer and director of TEI and by virtue of his ownership or beneficial control of more than 10% of the issued and outstanding voting shares of TEI. Also, during this period, Hinke held over 20% of TEI's issued and outstanding common shares.

[10] During the same period Hinke also carried out transactions in TEI shares, and failed to file insider reports reflecting these transactions, as required by section 107 of the Act. Hinke carried out transactions in TEI shares that constituted a distribution of the securities of TEI without a prospectus contrary to subsection 53(1) of the Act.

**(b) Terms of the First Settlement Agreement**

[11] On April 9, 2002, Hinke entered into a settlement agreement with the Executive Director of the Commission with respect to the above mentioned conduct (the "First Settlement Agreement"). The First Settlement Agreement required Hinke to: (a) undertake to make all future required regulatory filings regarding his transactions in TEI shares in a timely manner; and (b) make a voluntary contribution in the amount of $8,000.00 to the Commission's Investor Education Fund on or before April 8, 2002.

**(2) The Second Settlement Agreement**

**(a) Conduct at Issue in the Second Settlement Agreement**

[12] During the period between April 11, 2005 to January 3, 2006, Hinke held more than 10% of the total number of TEI shares, and was therefore an insider, as defined in the Act. Hinke executed trades over 32 times in TEI, reducing his holdings in TEI from 16.1% to 10.9% and resulting in the sale of 870,050 TEI shares for a value of $188,518.40. For each of the above noted trades in TEI, Hinke failed to file an insider report as required by subsection 107(2) of the Act.

[13] On December 12, 2005, Hinke was informed by Staff that his conduct continued to violate securities law. This conduct violated the terms of the First Settlement Agreement.

[14] As of February 15, 2006, Hinke was no longer an insider of TEI in that he held less than 10% of the total number of TEI shares and was no longer employed by TEI.

**(b) The Second Settlement Hearing**

[15] On March 6, 2006, Staff filed a Statement of Allegations in relation to Hinke's conduct during the period of April 11, 2005, to January 3, 2006, and on that same day the Commission issued a Notice of Hearing.

[16] At a hearing held on April 12, 2006, a Panel considered an Agreed Statement of Facts, and based on that Agreed Statement of Facts, the Commission found that Hinke had again contravened Ontario securities law and acted contrary to the public interest by failing to file insider reports during the period of April 11, 2005, to January 3, 2006. The Commission also noted that Hinke had breached the First Settlement Agreement.

**(c) Terms of the Second Settlement Agreement**

[17] Staff and Hinke entered into a settlement agreement (the "Second Settlement Agreement"). On May 1, 2006, the Commission issued an Order (the "May 1, 2006 Order") approving the Second Settlement Agreement, and ordered that Hinke: (a) cease trading in the securities of TEI for a six month period starting from February 15, 2006; (b) cease trading in securities of all other reporting issuers in which Hinke holds more than 5%, or for which he is deemed to be an insider for one year starting on May 1, 2006; (c) be reprimanded; (d) pay an administrative penalty of $32,000, and (e) pay $5,000 in costs. In addition, as a term of the Second Settlement Agreement, Hinke undertook to provide a copy of the Order to any registrant with whom he dealt with for a one year period from the date of the Order.

[18] The Second Settlement Agreement also refers to the fact that on March 2, 2006, the Canadian Revenue Agency ("CRA") obtained an Order from the Federal Court of Canada to seize all of Hinke's shares in TEI. The CRA seizure is currently under appeal by Hinke in Federal Court - Trial Division, Court File No. T-580-06. Hinke advised Staff that pending the outcome of the appeal, all of his remaining TEI shares are being held, in trust, with Gowling Strathy Henderson LLP in Ottawa.

**(3) The Conduct at Issue in this Hearing**

**(a) Staff's Allegations**

[19] The matter before us arose out of a Notice of Hearing issued by the Commission on November 7, 2006, in relation to a Statement of Allegations issued by Staff on that same day.

[20] The Statement of Allegations alleges that:

(1) Hinke breached the cease trade term of the May 1, 2006 Order;

(2) Hinke breached his undertaking in the Second Settlement Agreement to provide a copy of the Order to all registrants with whom he dealt; and

(3) Hinke made misleading or untrue statements to Staff and the Commission regarding his assets and liabilities and TEI shareholdings.

[21] A hearing was held on December 8, 2006, to consider preliminary matters, and to set a date for the hearing on the merits and the hearing for sanctions and costs. On December 13, 2006, the Commission made an order setting down the date for the hearing on the merits on February 14, 2007, and the date for the hearing on sanctions and costs on February 28, 2007.

**C. The Hearing on the Merits**

**i. Preliminary Matter**

[22] At the commencement of the hearing on the merits, Hinke made a request to have the entire proceeding held in camera. Submissions on this request were heard in camera. Hinke made oral submissions and Staff presented oral and written

submissions on this issue. Staff did not oppose two matters being dealt with in camera. After considering the submissions from both parties we decided that it was appropriate to hear CRA related matters in camera.

**ii. Evidence**

**(1) Staff's Evidence**

[23] Documentary evidence filed by Staff to establish the alleged breach of the Second Settlement Agreement included: (1) the Agreed Statement of Facts, dated April 10, 2006, which was relied on by the Commission to enter into the Second Settlement Agreement; (2) the Second Settlement Agreement; and (3) the May 1, 2006 Order that accompanied the Second Settlement Agreement. Staff also filed a brief of documents containing correspondence, trading documents, Hinke's BMO Nesbitt Burns ("BMO") account statements and Hinke's sworn statement of assets and liabilities as of April 1, 2006.

[24] Staff provided evidence to establish that Hinke was prohibited from trading TEI shares. Staff referred us to sub-paragraph 2(i) of the May 1, 2006 Order which states:

> 2. Pursuant to Clause 2 of sub-section 127(1) of the Act, that trading by Thomas Hinke shall cease:
>
> > (i) in the securities of Thermal Energy International Inc. ("TEI") for a six-month period commencing from the date of his last trade in TEI, being February 15th, 2006.

[25] Staff also submitted evidence to show that Hinke made an undertaking to provide a copy of the May 1, 2006 Order to all registrants with whom he dealt. Staff referred us to the preamble of the May 1, 2006 Order, which states:

> And upon Hinke agreeing to provide a copy of this Order to any registrant with who he deals for the next year from the date of this Order.

[26] Further, Staff adduced evidence to demonstrate that Hinke advised Staff that all his TEI shares were seized by the CRA and held in trust by Gowling, Strathy & Henderson LLP. Staff directed us to paragraph 12 of the Second Settlement Agreement which reads as follows:

> […] all of Hinke's remaining TEI shares are being held, in trust, with Gowling Strathy Henderson LLP in Ottawa.

[27] Staff also called two witnesses to give evidence. We heard evidence from George Gutierrez, the Commission investigator who was assigned to Hinke's case, and Sharon Murray, the individual from the BMO branch who took the order from Hinke to sell his TEI shares.

**(a) Gutierrez's Testimony**

[28] George Gutierrez ("Gutierrez") is an investigator in the Case Assessment Team of the Commission's Enforcement Branch.

[29] Gutierrez testified that Enforcement Management asked him to review the trading of TEI shares, and as a result, he ordered trading data for TEI. The correspondence and documents obtained during Gutierrez's investigation of the sale of TEI shares and the Section 19(3) Order of the Commission, dated August 3, 2006, which directed BMO to produce the documents, were filed in evidence.

[30] Gutierrez testified that the trading data he received in the document from the Market Regulation Services Inc.'s Trading Summary for TEI revealed that there was only one visible trade on July 7, 2006, through BMO, and this was from Hinke's account for the sale of 17,478 shares of TEI at $0.1541. This document also showed that a commission of $125.12 was charged for this transaction, leaving a net value of $2,568.169.

[31] Further, Gutierrez testified that correspondence from BMO, dated September 11, 2006, showed that Hinke traded TEI shares on July 7, 2006. In particular, the attachments to the September 11, 2006 letter included a copy of the trade ticket for the electronic sale of 17,478 TEI shares and a copy of the certified cheque that was issued to Hinke on July 12, 2006 for the sale of these shares.

[32] In his testimony, Gutierrez explained that the electronic trade ticket summarizes the trade activity on the July 7, 2006 sale of the 17,478 TEI shares. The electronic trade ticket states that the TEI shares were sold at three different prices on July 7, 2006: 16,500 shares were sold at $0.15500, 500 shares were sold at $0.15000 and 478 shares were sold at $0.13000.

[33] Gutierrez also gave testimony relating to a letter from BMO dated December 1, 2006. The attachment to this letter included a copy of a signed e-mail, dated March 14, 2006, from Hinke stating his correct address so that his account could be reactivated.

[34] In addition, Staff submitted as evidence copies of statements from Hinke's BMO account. Gutierrez testified that the June 30, 2006 statement indicated that there were 17,478 TEI shares in the account, and the July 31, 2006 statement indicated the sale of 17,478 TEI shares at a price of $0.1541 per share. Gutierrez also testified that the statements for March to July indicated Hinke's correct address.

**(b) Murray's Testimony**

[35] Sharon Murray ("Murray") is an investment representative at BMO at the Dalhousie branch in Ottawa. Murray has been employed as an investment representative with BMO for 10 years and she works for four registered representatives (investment advisers) at BMO.

[36] Murray testified that in her capacity as an investment representative at BMO at the Dalhousie branch in Ottawa, she dealt with Hinke regarding his BMO account.

[37] She recalled that Hinke phoned her regarding his account in early March 2006, and she could not find it on the system. Murray testified that she explained to Hinke that the reason this can happen is if an address has been changed without notification and when mail is returned, accounts are restricted and put in a special house code for addresses unknown.

[38] Staff filed in evidence a copy of an e-mail sent to Murray from Hinke with his new address and signature to reactivate the account. Murray testified that this was accurate and that Hinke subsequently phoned her to ensure that the address was updated. Murray also testified that Hinke phoned her to verify the contents of his BMO account.

[39] Murray testified that Hinke called her on July 7, 2006, to sell his TEI shares, and that Hinke made an unusual request for the funds from the sale of his TEI shares to be sent out to him in a certified cheque.

[40] Murray testified that she had no knowledge of the Commission's May 1, 2006 Order, and that if she had had knowledge of the May 1, 2006 Order, she would not have been able to effect the sale of Hinke's TEI shares.

**(2) Hinke's Evidence and Admissions**

[41] Hinke adduced oral and documentary evidence. He also testified on his own behalf.

[42] Hinke provided evidence regarding his BMO account statements. He referred to the copy of the January 31, 2006 statement which states "Stat returned by Canada Post" to show that BMO did not have his correct address on file.. During his cross-examination of Murray, Hinke questioned Murray about his BMO account and she stated that she "could not access the account […] most likely because mail had been sent out and returned by Canada Post and it had been over 30 days".

[43] With regards to the status of his BMO account, Hinke cross-examined Murray who gave oral testimony that the account was dormant and that the last account transaction took place in 1999.

[44] In Hinke's testimony, he acknowledged that after Staff contacted him in October, he realized that he had technically breached the cease trade provision in the May 1, 2006 Order. Hinke also testified that he breached the undertaking in the Second Settlement Agreement because he did not provide to BMO a copy of the Second Settlement Agreement.

[45] In addition, Hinke provided medical evidence to demonstrate that he was suffering from anxiety and stress during 2005 and 2006, at the time when the conduct in this matter arose.

**iii. Submissions**

**(1) Staff's Submissions**

[46] Staff alleges that Hinke: (a) breached the cease trade provision in the May 1, 2006 Order; (b) breached an undertaking made to staff in the Second Settlement Agreement; and (c) made misleading statements to Staff.

[47] Staff submits that the evidence establishes that Hinke breached the May 1, 2006 Order. Contrary to the cease trade term of the Order, on July 7, 2006, Hinke sold 17,478 TEI shares from his BMO account, and by cheque dated July 12, 2006, Hinke received funds in the amount of $2,554,45 on account of the trade.

[48] Staff relies on Hinke's own admission set out above along with the evidence of Gutierrez, who produced copies of documents which reflect the content of Hinke's BMO account, the subsequent sale of Hinke's TEI shares on July 7, 2006, and the certified cheque demonstrating the proceeds of that sale.

[49] Staff also submits that the breach of the cease trade order has been established by Murray's testimony that Hinke phoned her to reactivate his account and to subsequently to sell his TEI shares on July 7, 2006.

[50] In addition, Staff submits that the monetary amount from the sale of Hinke's TEI shares in the BMO account is not insignificant, and that Staff relied on Hinke's sworn statement of assets and liabilities and would not have entered into the Second Settlement Agreement with Hinke under its terms if they believed that Hinke had exigible assets which they could proceed to collect upon. Staff also submits that if respondents could make representations to Staff and to this Commission in their settlement agreements and then claim inadvertence with respect to subsequent non-compliance with the agreements or that instance of non-compliance were *de minimus*, this would set a dangerous precedent.

[51] Further, Staff submits that Hinke had an obligation to provide a copy of the May 1, 2006 Order to any registrant he dealt with and this is evident from paragraph 13(f) of the Second Settlement Agreement which states:

> Hinke shall provide a copy of the order issued by the Commission to any registrant with whom he deals for the next year

[52] Staff relies on Hinke's own admission that he did not provide a copy of the May 1, 2006 Order to BMO, as well as the evidence from Murray that BMO never received a copy of the May 1, 2006 Order, and that if they had, the July 7, 2006 trade would not have been authorized.

[53] With regards to the misrepresentation or misstatements made by Hinke to Staff, Staff submits that in a sworn statement of assets and liabilities Hinke did not reveal his TEI shares held in the BMO account in the schedule. Staff also submits that whether the statement of assets and liabilities was effective as of April 1, 2006 or April 28, 2006, it did not reflect Hinke's TEI shares held in the BMO account.

[54] In addition, Staff cited paragraph 12 of the Second Settlement Agreement which states:

> […] all of Hinke's remaining TEI shares are being held, in trust, with Gowling Strathy Henderson LLP in Ottawa.

[55] Staff submits that contrary to paragraph 12 of the Second Settlement Agreement, the 17,478 shares sold by Hinke through his BMO account on July 7, 2006, were not held in trust with Gowling Strathy Henderson LLP and were not disclosed to Staff in the sworn statement of assets and liabilities.

[56] Staff also submits that Hinke's conduct was in contravention of Ontario securities law and was contrary to the public interest.

[57] Moreover, Staff submits that it has provided clear and convincing evidence based upon cogent evidence. With regard to the bank statements submitted through Gutierrez, Staff submits that hearsay is reliable pursuant to section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, according to the Commission's recent decision in *Re Allen* (2005), 28 O.S.C.B. 8541. As well, it is Staff's submission that the banking records submitted through Gutierrez have all the hallmarks of reliability; they are kept in the regular course of banking records, and the evidence regarding the sale of Hinke's TEI shares was corroborated by Murray.

[58] Further, in Staff's written submissions, Staff submitted that evidence of a respondent's intention to breach a cease trade order does not go to whether the respondent engaged in conduct contrary to the public interest, but rather to the sanctions to be imposed.

[59] Staff also submitted that any medical issues raised by Hinke are irrelevant to the conduct portion of a hearing held under section 127 of the Act, and that such evidence, would only be relevant and admissible at the sanctions hearing.

**(2) Hinke's Submissions**

[60] With regard to Staff's first allegation that the trade of TEI shares executed on July 7, 2006, violated the cease trade term set out in the May 1, 2006 Order, Hinke submits that he had no memory of the trade until he was contacted by Staff in October. He also submits that he had no idea he had done anything wrong until he was contacted by Staff in October.

[61] Hinke also submits that the trade of his TEI shares on July 7, 2006 was a misunderstanding. Hinke submits that he thought that the variance that was granted to the CRA by the Commission to sell his TEI shares also applied to him and he submitted this in his letter to Staff dated October 26, 2006:

> […] my legal understanding of the OSC cease trade order may have been wrong or in error, because I believed that the OSC's granting of a confidential variance to allow my ceased TEI shares to be sold one month earlier by the CRA in July 2006 – would also extend to me.

[62] Hinke further submits that he suffered from financial hardship and had to sell the shares. In his letter to Staff dated October 26, 2006, he states:

> I was financially devastated with no assets or money, I could not afford to pay the multiple lawyers that would have been needed to amend the complex CRA payment arrangement and to interface with the OSC, if I had disclosed the existence of the "Dormant" BMO account and the TEI shares to both the OSC and CRA.

[63] Hinke admits that he breached the undertaking in the Second Settlement by not providing registrants with a copy of the May 1, 2006 Order.

[64] With regard to Staff's allegation that Hinke made misleading statements to Staff and the Commission, Hinke submits that he had no knowledge of the TEI shares contained in the BMO account when his statement of assets and liabilities was prepared. Hinke referred us to his letter addressed to Staff, dated October 26, 2006, in which he submitted:

> […] I did not know about the existence of the BMO account in question on May 1, 2006, as its existence was completely forgotten for over the past 8 years […].

[65] In addition, Hinke submits that the correct date of the preparation of his statement of assets and liabilities was April 1, 2006 and not April 28, 2006. Staff pointed out that it did not take issue with the fact that the statement of assets and liabilities was made on April 1, 2006.

[66] Hinke submits that he never received any account statements from BMO for seven to eight years and that he was not aware of the content of the account. He refers to the fact that the January 31, 2006 BMO account statement states, "Stat returned by Canada Post", and that he never received his BMO account statements in the mail. Hinke also points out that in his e-mail correspondence with Murray on March 14, 2006, there is no mention of the quantity or type of shares in his BMO account.

[67] Hinke submits that once his address was corrected on the BMO statements, he had no knowledge of the content of the account because he did not open his mail for several months as he was heavily involved in litigation and under stress and anxiety. Hinke maintains that he did not see a BMO account statement until about late June or early July, and that was the first time he knew about the content of his BMO account.

[68] Lastly, Hinke disagreed that he had made misrepresentations to Staff in his statement of assets and liabilities. Hinke submits that the sale of his TEI shares on July 7, 2006, involved only a small quantity, less than 0.27% of his total holdings and that it was not significant enough to report or disclose. He adds that this amount is insignificant and would not have changed the numbers in his assets and liabilities.

**iv. Analysis and Conclusion**

[69] Hinke admitted to Staff's first two allegations that he did in fact breach the cease trade term in the May 1, 2006 Order and that he breached an undertaking made to staff in the Second Settlement Agreement by not providing a copy of the May 1, 2006 Order to the individuals he dealt with at BMO.

[70] With respect to Staff's third allegation dealing with whether Hinke made misrepresentations and misstatements to Staff, we find that Staff's clear and cogent evidence established that Hinke did indeed misrepresent information contained in his sworn statement of assets and liabilities. In particular, it is clear that the TEI shares in Hinke's BMO account were not included in the sworn statement of assets and liabilities. This omission is evident from the content of the statement of assets and liabilities. The evidence also shows that at the time the statement of assets and liabilities was prepared, Hinke possessed 17,478 TEI shares in his BMO Account. This is evident from the March 31, 2006 BMO account statement, which also stated Hinke's correct mailing address. Hinke did not provide any documentation to contradict this and we are of the view that his submission that he neglected to open his mail is irrelevant.

[71] Staff's evidence in this matter was uncontroverted, and credible. We accept the evidence of Staff's witnesses Gutierrez and Murray.

[72] We find that Murray was a credible witness, and we accept her testimony regarding her phone conversations with Hinke during March 2006, that subsequent to reactivating his BMO account, Hinke confirmed the content of his account with Murray and was aware that he held TEI shares in his BMO account.

[73] Also, whether the statement of assets and liabilities was dated April 1, 2006, or April 28, 2006, is irrelevant. It is reasonable to believe that after the reactivation of his BMO account on March 15, 2006, Hinke had access to sufficient information to verify the content of his BMO account.

[74] Furthermore, Hinke knew he had an account at BMO with something in it when he contacted Murray.

[75] We reject Hinke's argument that because the sale of his TEI shares on July 7, 2006 involved only a small quantity, less than 0.27% of his total holdings in TEI, it was not significant enough to report or disclose. Instead, we are of the view that Hinke misrepresented his assets and liabilities to Staff because he did not disclose the existence of the BMO account, and the exact quantity of shares contained in this account does not change the fact that Hinke failed to inform Staff, the CRA and his accountants about owning a BMO account. Further, we accept that Staff would not have entered into the Second Settlement Agreement with Hinke under its terms if they believed that Hinke had exigible assets, which they could proceed to collect upon. We agree with Staff that if respondents could make representations to Staff and to this Commission in their settlement agreements and then claim inadvertence with respect to subsequent non-compliance with the agreements or that instances of non-compliance were *de minimus*, this would set a dangerous precedent.

[76] Based on Hinke's admissions and the evidence and submissions presented by the parties, we are of the view that the evidence is clear and uncontradicted that Hinke:

(1) breached the cease trade term of the May 1, 2006 settlement order;

(2) breached his undertaking in the Second Settlement Agreement to provide a copy of the order to all registrants with whom he dealt; and

(3) made false statements to Staff and the Commission regarding his assets and liabilities in TEI.

**D. The Hearing on Sanctions and Costs**

**i. Hinke's Request to Adjourn the Hearing on Sanctions and Costs**

[77] At the close of the hearing on the merits, Hinke asked to adjourn the hearing on costs and sanctions to be held on February 28, 2007, to a later date on the grounds that he needed more time to make arrangements for his medical doctor to testify at the hearing.

[78] We declined to grant Hinke's request for adjournment on the basis that Hinke had adequate time to make the necessary arrangements with his doctor. As of December 8, 2006, Hinke was aware that a hearing on sanctions and costs would be held on February 28, 2007. During the hearing on December 8, 2006, the Chair of the Panel set down the hearing on sanctions and costs for February 28, 2007, and explained to Hinke that, "[…] it may well be that Staff would think it appropriate that the Panel hear from the [doctor], or have an affidavit or it may be just enough for there to be a letter".

[79] As a result, Hinke was aware on December 8, 2006, of the position of the Panel on this issue. Between December 8, 2006, and February 28, 2007, Hinke had approximately 11 weeks, almost three months, to make the necessary arrangements with his doctor to attend the hearing. In our view, 11 weeks is sufficient time.

**ii. Evidence**

[80] In addition to the evidence presented during the hearing on the merits, Staff and Hinke provided additional evidence at the hearing on sanctions and costs.

**(1) Staff's Evidence**

[81] During the hearing on sanctions and costs, Staff called one witness, Gutierrez, to testify. Gutierrez gave testimony regarding trades dealing with TEI shares. Gutierrez gave evidence that a brokerage account under the name of Econolibrium Energy Inc. ("Econolibrium"), which was incorporated on June 28, 2006 and whose sole director was Hinke, received 225,000 TEI shares from Hinke's mother, Elizabeth Hinke, on July 7, 2006. Gutierrez also gave evidence that on August 21, 2006, six days after the end of the cease trade imposed on Hinke, 13,500 TEI shares were sold at $0.155.

[82] Gutierrez also gave evidence regarding why Hinke engaged in conduct that breached the Act in 2001 and 2002. He referred to correspondence between himself and Hinke's lawyers dated October 15, 2001, August 24, 2001, and January 10, 2006. In particular, the letter dated August 24, 2001 from Borden Ladner Gervais LLP states that:

> During the relevant time period, [TEI] was in financial distress. As such, Mr. Hinke's efforts were completely directed towards the survival of the company and he neglected his own personal obligations. As well, Mr. Hinke was under the

> mistaken belief that the annual disclosure contained in the proxy circular was sufficient disclosure and that shareholders approval of the transactions was all that was required.

[83] In addition, a letter dated January 10, 2006 from Benson Edwards LLP states that Hinke engaged in conduct that breached the Act because:

> Mr. Hinke was unclear that the definition of "insider" included holding 10% or more of the shares of a reporting issuer, without also requiring a knowledge component of inside information obtained by being a director, officer or other type of service provider privy to such knowledge.
>
> During the period in question, Mr. Hinke was under a doctor's care suffering from anxiety and depression and did not retain counsel with regulatory reporting knowledge to assist him in his dealings with respect to [TEI].

[84] Further, correspondence from Hinke himself to the Commission, dated October 26, 2006, also explained Hinke's conduct:

> In reality, based on my misunderstanding of the OSC variance to the cease trade order, I did not realize until August 2006 that a mistake was made in closing out the BMO account in July 2006. However, at the time, I was under extreme stress and duress, was of poor mental health, and I did not believe that I had a choice – under the abnormal circumstances I was dealing with.

[85] In addition, Gutierrez gave evidence regarding a conference call between himself, Hinke, Staff, and Hinke's former therapist Dr. Iris Jackson, held on February 27, 2007. Gutierrez recounted that Dr. Jackson is a clinical psychologist and that she indicated that Hinke was suffering from anxiety, stress and occasional bouts of memory loss over the last few years. Gutierrez also pointed out that although Dr. Jackson had in the past provided Hinke with letters for different litigation proceedings, she did not provide a specific letter for this matter.

[86] Lastly, Staff adduced evidence relating to Hinke's pattern of repetitive conduct in this matter. Staff referred us to two decisions dated November 2, 2006 of Madam Justice Linhares de Sousa, namely *Thomas Vincent Hinke v. Linda Jane Lake* (2 November 2006), Ottawa 94-FL-21584 (Ont. Sup. Ct.) ("*Hinke v. Lake Reasons on Motion*"), and *Linda Lake v. Thomas Hinke* (2 November 2006), Ottawa 99-FL-376 (Ont. Sup. Ct.) (the "Endorsement"), to show that Hinke structures his affairs to suit whatever need he has at the time and to show how Hinke has utilized his TEI shares in the past. Specifically, Staff referred us to paragraph 6 of the Endorsement which states the following:

> Mr. Hinke divested himself of his property for the purpose of satisfying other debts of his choosing. This he did by transferring TEI shares to his current spouse, Ms. Shulkov, and to other creditors in order to satisfy his personal debts […] Mr. Hinke does not deny these transfers and confirms them in his affidavit material in these proceedings. His explanation is that he himself could not sell the TEI shares because of their nature and the restrictions attached to them. He could, however, transfer them to 3rd parties who would accept the transfer.

**(2) Hinke's Evidence**

[87] First of all, Hinke gave evidence relating to Dr. Jackson's qualifications. He recounted that Dr. Jackson is a clinical psychologist and is qualified under the *Canada Health Act*, R.S.C. 1985, c. C-6. Staff did not contest the qualifications of Dr. Jackson.

[88] Hinke referred to three letters written by Dr. Jackson dated January 30, 2007, July 15, 2006, and August 31, 2005.

[89] All three letters written by Dr. Jackson discuss the fact that Hinke was suffering from anxiety and acute stress.

[90] Further, Hinke submitted as evidence letters from Borden Ladner Gervais LLP dated June 15, 2001, and December 15, 2000, which dealt with Hinke's conduct relating to the first Settlement Agreement.

[91] In addition, Hinke testified on his own behalf and gave oral evidence. In his testimony, Hinke stated that he was sorry and had the utmost respect for the Commission.

[92] Hinke also gave testimony relating to his financial situation and problems, and that as a result of being involved in employment litigation and litigation of a family matter, he was in poor financial shape. In his oral evidence, Hinke stated that since he was in a very difficult financial situation, his mother offered to provide assistance through a loan of her TEI shares to Hinke's company Econolibrium.

[93] In order to establish his past work experience, Hinke adduced into evidence a copy of his resume to demonstrate the work he has done in the past. In his resume, Hinke represents that he is "completely familiar with public company corporate governance and compliance issues", however in testimony, Hinke admitted that he has never held any brokerage designations.

[94] Hinke also called his wife, Elena Shulkov ("Shulkov"), to testify on his behalf. Shulkov testified that she was sorry and that she supports her husband.

**iii. Submissions**

**(1) Staff's Submissions**

[95] Staff presented oral and written submissions relating to relevant considerations and the law in connection with sanctions, and it is Staff's submission that the following sanctions would be appropriate for Hinke:

(1) Cease trading in securities directly or indirectly and that Hinke be prohibited from acquiring securities of any issuer for a period of 10 years;

(2) Prohibition from being an officer or director of an issuer for 10 years and that no exemptions contained in Ontario securities law shall apply to Hinke for the same period of time; and

(3) In lieu of an administrative penalty and disgorgement, Hinke shall pay $15,000 towards Staff's costs of the investigation and hearing of this matter.

Staff also submits that there should be no carve-out for an RRSP and that Hinke should be removed from the market completely because Hinke's pattern of conduct reveals that he structures his affairs to meet whatever priorities he has at the moment.

[96] In Staff's view, the efficacy and the integrity of Commission orders, undertakings and settlement agreements should not be eroded by respondents who repeatedly disrespect and disregard their clear terms. As well, Staff submits that breaches of a respondent of obligations made in connection with Commission settlement agreements is conduct contrary to the public interest which should be taken seriously and considered as an aggravating factor in determining appropriate sanctions. In particular, Staff referred us to the following passage in *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 ("*Mithras*"):

> […] the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. (*Mithras*, *supra* at 1610 and 1611.)

[97] Further, Staff submits that we are not in a situation where we have an individual who has inadvertently breached the Act. It is Staff's submission that Hinke's conduct underscores a pattern of behaviour that reflects clearly what can be expected from this respondent in the future. Staff submits that in this case, where Hinke violated two prior settlement agreements and the May 1, 2006 Order, and since three proceedings have been commenced over the course of five years all related to the same sort of conduct, there is a need to protect the investing public from Mr. Hinke. Staff also submits that it is in the public interest to impose significant sanctions on Mr. Hinke in order to send a strong message of deterrence to those who would ignore orders of this Commission.

[98] In support of its position, Staff relies on the Commission's decision in *Re Prydz* (2000), 23 O.S.C.B. 3399. Staff submits that the situation in *Re Prydz* is similar since it dealt with a respondent that breached undertakings made in a settlement agreement with the Commission. Specifically, Staff referred us to paragraph 20 of this decision which states:

> In this case, Mr. Prydz not only breached his undertakings made in the Settlement Agreement, he did so in three different respects, showing, in our view, that he considered the Settlement Agreement as no more than a means of getting rid of the settled proceedings, with no real intention of being bound by the Settlement Agreement. In our view, such conduct exacerbates the breaches of the Act admitted by Mr. Prydz in the Settlement Agreement, and shows that Mr. Prydz continues to have little regard for the securities laws of this province. In our view, the public interest clearly requires that Mr. Prydz be removed from the capital markets of this province for a very substantial period of time in order to protect those markets and investors in this province. (*Re Prydz*, supra at para. 20)

[99] During submissions, Staff also referred us to other decisions where securities commissions have in the past sanctioned respondents for breaching undertakings made to a securities commission. In particular, Staff referred us to *Re National Gaming*

*Corp.* (2000), 9 A.S.C.S. 4592, a decision of the Alberta Securities Commission and *Re Koonar* (2002), 25 O.S.C.B. 2691 and *Re Rash* (2006), 29 O.S.C.B. 7403, decisions of this Commission.

[100] Staff also submits that the fact that Hinke tried to conceal his actions surrounding the trade in his TEI shares on July 7, 2006, is an aggravating factor that should be considered when determining appropriate sanctions for Hinke. According to Staff, the fact that: (1) Hinke did not disclose his TEI shares in the BMO account to the CRA, and (2) Hinke did not set out the TEI shares in his BMO account in his sworn statement of assets and liabilities, all infer that Hinke was trying to ensure that his TEI shares could not be traced.

[101] With regard to Hinke's physical health and mental state, Staff submits that Hinke was still able to function and this is demonstrated from the fact that during June and July 2006, Hinke incorporated a company and was able to have shares transferred to that company and he sold those shares shortly afterwards. Staff also submits that the evidence relating to Hinke's physical health and mental state is generic therapeutic evidence and does not relate to the specifics of this case since his doctors were never provided with any details or facts of this case or the situation surrounding this case. Further, Staff submits that it is a dangerous precedent if respondents under serious stress and anxiety are somehow held to a lesser standard of conduct, and consequently, stress and anxiety should not be a license for repeated violations of the Act.

[102] Regarding costs, Staff submitted a time sheet detailing Staff's work for all aspects of the proceeding, and only requested that $15,000 in costs be sought instead of $60,000. Furthermore, the costs detailed by Staff only reflected the costs of litigation counsel and the primary investigator and not the costs of other investigators, law clerks and disbursements.

**(2) Hinke's Submissions**

[103] Hinke made submissions regarding mitigating factors for the Panel to consider. Throughout his submissions, Hinke referred to the fact that he was sorry and wanted to move on with his life. He also asked the Panel to consider the fact that he is trying to recover and get back on his feet to rebuild his future.

[104] Hinke submits that his conduct is not repetitive and his actions regarding the First Settlement Agreement, the Second Settlement Agreement and the breach of the May 1, 2006 Order are totally separate independent events with different sets of circumstances.

[105] Hinke also submits that his conduct was unintentional because when he breached the First Settlement Agreement, he did not realize that he was still an insider. In addition, Hinke submits that since his conduct was unintentional, he was not harmful to the capital markets and did not affect any third part. Further, Hinke submits that he was only trading TEI shares, and not the shares of other companies.

[106] Lastly, Hinke submits that the family law decisions referred to by Staff are irrelevant, and that the decision *Hinke v. Lake Reasons on Motion*, is currently being appealed.

**iv. Analysis and Conclusion**

**(1) Relevant Considerations for Imposing Sanctions**

[107] The Commission's mandate in upholding the purposes of the Act is set out in section 1.1 of the Act:

> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[108] The Commission is guided by section 1.1 of the Act, and as well, the Commission has the role to exercise public interest jurisdiction. This role is set out in *Mithras*:

> [...] the role of the Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant - those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. (*Mithras*, *supra* at 1610.)

[109] In determining appropriate sanctions, we must consider the specific circumstances of the case and ensure that sanctions are proportionate. As set out in *Re M.C.J.C. Holding and Michael Cowpland* (2002), 25 O.S.C.B. 1133 ("*Cowpland*"):

> We have a duty to consider what is in the public interest. […] In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are

proportionately appropriate with respect to the circumstances facing the particular respondents. (*Cowpland*, *supra* at paras. 9 and 10.)

[110] The Commission in *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746, has indicated the followings factors that it may consider when imposing sanctions:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) the size of any profit (or loss avoided) from the illegal conduct;

(g) any mitigating factors such as the effect any sanction might have on the livelihood of the respondent; and

(h) the remorse of the respondent.

[111] Further, the Supreme Court in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*"), has confirmed that the Commission may consider general deterrence as a factor in determining appropriate sanctions. The Court stated at paragraph 60 of *Cartaway* that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive".

[112] In addition, we must also take into consideration the respect a respondent has shown for past Commission settlement agreements, orders and undertakings. This approach was taken in *Re Prydz*, where the Commission found that the respondent had intentionally and knowingly breached a settlement agreement which he had previously entered with the Commission. The Commission found that breaching a Commission settlement agreement constitutes a disregard for the securities laws of this province. Specifically, in *Re Prydz*, the Commission stated that:

> […] *intentional breaches by a respondent party to a settlement agreement, which has been approved by a Commission order, of that party's undertakings in the settlement agreement* (which undertakings must be assumed to have been bargained for by Staff as necessary, in its view, for the protection of the public interest) is itself an action contrary to the public interest and *shows a lack of regard by the party for his or her obligations under Ontario securities l*aw sufficient to warrant an inquiry as to what, if any, additional sanctions should be imposed by the Commission in order to protect investors in, and the capital markets of, Ontario. (Emphasis added.) (*Re Prydz*, supra at para. 18)

[113] Accordingly, it is necessary in each case to consider not only the respondent's conduct in the current matter, but also the respondent's past conduct in his dealings with the Commission. Such considerations ensure that others are deterred from disregarding Commission orders, undertakings and settlements, and this allows the Commission to fulfill its mandate under the Act to protect investors and to ensure the fair and efficient operation of the capital markets.

**(2) Appropriate Sanctions and Costs in this Case**

[114] For the reasons that follow, we have decided that it would be in the public interest to make the following order against Hinke:

(1) Pursuant to subsection 127(1) clause 2 of the Act, that Hinke cease trading in securities directly or indirectly and that he be prohibited from acquiring securities of any issuer for a period of ten years, with the exception that Hinke be permitted to trade in securities for the account of a registered retirement savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:

(i) the securities are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) Hinke does not own beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Hinke must carry out permitted trading through a registered dealer and through accounts opened in his name only and must close any accounts in which he has any legal or beneficial ownership or interest that were not opened in his name only;

(2) Pursuant to subsection 127(1) clause 8 of the Act, Hinke be prohibited from becoming or acting as an officer or director of any issuer for ten years;

(3) Pursuant to subsection 127(1) clause 3 of the Act, no exemption contained in Ontario securities law shall apply to Hinke for ten years; and

(4) Pursuant to section 127.1 of the Act, Hinke pay $15,000 towards Staff's costs relating to the investigation and hearing of this matter.

[115] In keeping with the principles of sanctioning established by the Commission, strong effective sanctions are warranted in this case in order to protect investors and maintain confidence in the capital markets. As established in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Commission's jurisdiction under sections 127 and 127.1 of the Act is protective and preventive and it is intended to be exercised to prevent future harm to Ontario's capital markets. (*Asbestos*, *supra* at para. 42)

[116] Hinke's past conduct of breaching the First Settlement Agreement, the Second Settlement Agreement and the cease trade term of the May 1, 2006 Order may well be representative of what might be expected of this respondent in the future. We consider his pattern of conduct to be an aggravating factor.

[117] Also, Hinke's past conduct reveals that he has shown disregard for the Commission and its orders on two separate occasions. Prior reprimands and cease trade orders have had no effect on Hinke's conduct. We find that this is repetitive conduct, and we do not find Hinke's submissions regarding that he did not really mean to breach the settlement agreements credible since during family law proceedings, Hinke made the admission that "during the years 2000, 2005 and 2006 [Hinke] disposed of his shares for the benefit of himself to satisfy his personal debts […]". (*Hinke v. Lake Reasons on Motion*, *supra* at para. 70, subpara. 4.) As a result, we find that we are not in a situation where we have an individual who has inadvertently breached the Act. Instead, we are in a situation where an individual has repeatedly breached the Act. We rely on the Commission's decision in *Re Prydz* as authority that repeated breaches of Commission settlement agreements are an aggravating factor that comes into play when determining sanctions.

[118] Also, we find that an additional aggravating factor is the fact that Hinke tried to conceal his actions surrounding the trade of his TEI shares in the BMO account on July 7, 2006. As a result, we find it reasonable to impose a 10 year cease trade term on Hinke.

[119] With respect to Hinke's evidence and submissions relating to his physical and mental health, we note that none of the doctor's letters presented in evidence were prepared specifically for this proceeding. As a result, we do not attach much weight to these letters. We also note that Hinke was physically and mentally healthy enough to incorporate his company Econolibrium and actively seek work during 2006.

[120] While appearing before us, Hinke also stated that he is sorry and his wife has also testified to this effect. However, we note that during his testimony and submissions, Hinke presented us with a series of contradictory excuses. First, Hinke submitted he forgot about the BMO account; then, subsequently, Hinke submitted he knew about the BMO account but the amount of TEI shares contained in it were insignificant, and later Hinke submitted that he believed that at the time he was in fact authorized to trade his TEI shares because he thought the Commission variance granted to the CRA also applied to him too. These contradictory statements by Hinke diminish his credibility.

[121] Further, we do not agree with Hinke's submission that the breach of the cease trade order was insignificant because the sale of his TEI shares on July 7, 2006, involved only a small quantity of TEI shares relative to his total TEI holdings. In our view, a breach of a cease trade order is a breach regardless of the number of shares that are traded. Therefore, there should not be a sliding scale for breaches of a cease trade order such that little breaches do not count.

[122] We also find that severe sanctions are warranted in this case because it is necessary to protect the public from Hinke's future conduct and to deter others from engaging in similar conduct. Hinke has made representations in his resume that he is "completely familiar with public company corporate governance and compliance issues". His conduct between 2000 and 2006 is inconsistent with these representations, and as such, we find it reasonable to prohibit Hinke from acting as a director and officer for 10 years. The same rational applies to our decision to: (1) impose a 10 year cease trade order on Hinke; and (2) that exemptions contained in Ontario securities law will not apply to Hinke for a period of 10 years.

[123] In addition, we took into consideration Hinke's financial situation and Staff's submissions not to impose disgorgement in this case.

[124] Lastly, with respect to costs, we find that Staff's request for $15,000 is reasonable. In total, Staff incurred over $60,000 in costs for litigation counsel and its primary investigator, and this sum does not include the costs of other investigators, law clerks and disbursements. We find that Staff took a very conservative approach to determine the amount of costs to ask for. Considering that Staff only asked for 25% of their costs to be reimbursed, we find this to be generous to Mr. Hinke in the circumstances. Staff also submitted a detailed timesheet listing all work hours for different aspects of the proceeding which clearly accounts for the work Staff performed in this matter. Hinke did not file any written submissions or evidence to question or challenge the costs claimed by Staff.

[125] We are mindful that the relevant criteria that the Commission should consider when awarding costs include, but are not limited to, the seriousness of the charges and the conduct of the parties (*Re YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285 at para. 608) and the reasonableness of the costs requested by Staff (*Re Lydia Diamond Exploration of Canada* (2003), 26 O.S.C.B. 2511 at para. 217). In light of these two criteria, we find that $15,000 in costs is an appropriate amount.

**E. Decision on Sanctions and Costs**

[126] We consider that it is important in this case to impose sanctions that not only deter the respondent but also like-minded people from engaging in future conduct that violates securities law.

[127] For these reasons, we are of the opinion that it is in the public interest to order that:

(1) Pursuant to subsection 127(1) clause 2 of the Act, Hinke cease trading in securities directly or indirectly and that he be prohibited from acquiring securities of any issuer for a period of ten years, with the exception that Hinke be permitted to trade in securities for the account of a registered retirement savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:

(i) the securities are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) Hinke does not own beneficially more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Hinke must carry out permitted trading through a registered dealer and through accounts opened in his name only and must close any accounts in which he has any legal or beneficial ownership or interest that were not opened in his name only;

(2) Pursuant to subsection 127(1) clause 8 of the Act, Hinke be prohibited from becoming or acting as an officer or director of any issuer for ten years;

(3) Pursuant to subsection 127(1) clause 3 of the Act, no exemption contained in Ontario securities law shall apply to Hinke for ten years; and

(4) Pursuant to section 127.1 of the Act, Hinke pay $15,000 towards Staff's costs relating to the investigation and hearing of this matter.

**DATED** at Toronto, this 25th day of May, 2007.

"Wendell S. Wigle" "David L. Knight"

# 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 |
|---|---|---|---|---|
| CNR Capital Corporation | 10 Jul 07 | 20 Jul 07 | | |

### 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 |
|---|---|---|---|---|---|
| AireSurf Networks Holdings Inc. | 02 May 07 | 15 May 07 | 15 May 07 | 05 Jul 07 | |
| Fort Chimo Minerals Inc. | 05 Jun 07 | 18 Jun 07 | 18 Jun 07 | 09 Jul 07 | |

### 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 |
|---|---|---|---|---|---|
| AireSurf Networks Holdings Inc. | 02 May 07 | 15 May 07 | 15 May 07 | 05 Jul 07 | |
| AldeaVision Solutions Inc. | 03 May 07 | 16 May 07 | 16 May 07 | | |
| Argus Corporation Limited | 25 May 04 | 03 Jun 04 | 03 Jun 04 | | |
| CoolBrands International Inc. | 30 Nov 06 | 13 Dec 06 | 13 Dec 06 | | |
| Fort Chimo Minerals Inc. | 05 Jun 07 | 18 Jun 07 | 18 Jun 07 | 09 Jul 07 | |
| Hip Interactive Corp. | 04 Jul 05 | 15 Jul 05 | 15 Jul 05 | | |
| HMZ Metals Inc. | 03 Apr 06 | 14 Apr 06 | 17 Apr 06 | | |
| IMAX Corporation | 03 Apr 07 | 16 Apr 07 | 16 Apr 07 | | |
| SR Telecom Inc. | 05 Apr 07 | 18 Apr 07 | 19 Apr 07 | | |
| Urbanfund Corp. | 07 May 07 | 18 May 07 | 18 May 07 | | |
| VVC Exploration Corporation | 04 Jun 07 | 15 Jun 07 | 15 Jun 07 | | |

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# Chapter 5

# Rules and Policies

### 5.1.1 Notice of OSC Rule 24-501 – Designation as Market Participant

**NOTICE OF**
**ONTARIO SECURITIES COMMISSION RULE 24-501**
**DESIGNATION AS MARKET PARTICIPANT**

## A. INTRODUCTION

On June 12, 2007, the Commission made OSC Rule 24-501 – *Designation as Market Participant* (Rule) under the *Securities Act* (Ontario) (Act). The Rule was published for a 90-day comment period on January 12, 2007. No comments were received.

Under subsection 143.3 of the Act, the Rule was delivered to the Minister of Government Services on July 12, 2007. Unless the Minister rejects the Rule or returns it to the Commission for further consideration, it will come into force on October 1, 2007.

## B. BACKGROUND

The Rule is ancillary to National Instrument 24-101 – *Institutional Trade Matching and Settlement* (NI 24-101), developed by the Canadian Securities Administrators (CSA), which came into force in Ontario on April 1, 2007.

NI 24-101 provides a framework in provincial securities regulation for ensuring more efficient and timely settlement processing of trades, particularly institutional trades. Among other things, NI 24-101 requires registered dealers and advisors to establish, maintain and enforce policies and procedures that are designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed and in any event no later than, in most cases, the end of trade date or "T". Trade matching is generally the process by which the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among "trade-matching parties" (as defined in NI 24-101).

Part 6 of NI 24-101 imposes a number of requirements on so-called matching service utilities. A "matching service utility" is defined in NI 24-101 as a person or company that provides centralized facilities for trade matching, but does not include a recognized clearing agency in Ontario. Among other things, a person or company that intends to carry on business as a matching service utility must deliver Form 24-101F3 to the Commission under NI 24-101. The Commission understands that certain entities are proposing to offer their services as a matching service utility to participants in the Canadian institutional markets.

As noted in CSA Discussion Paper 24-401 – *Straight-through Processing*, published in April 2004,[1] the CSA believe the requirements of matching service utilities under NI 24-101 are appropriate to ensure minimal oversight, including (i) compliance with the OSC's Automation Review Program (ARP)[2] and (ii) ensuring interoperability with other matching service utilities. As an important infrastructure system involved in the clearing and settlement of securities transactions, a matching service utility operating in the Canadian markets may raise certain regulatory concerns. Trade matching is a complex process that is inextricably linked to the clearance and settlement process. While a matching service utility should bring efficiencies to the markets, it concentrates processing risk in the entity that performs matching instead of dispersing that risk among the dealers and their institutional customers. The breakdown of a matching service utility's ability to accurately compare trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. Accordingly, we believe that some regulatory oversight of the operational risks inherent in the use of a matching service utility is necessary.[3]

1 See (2004) 27 OSCB 3971, at 3997 and 3998.
2 See (2002) 25 OSCB 6789 and 6941 for a discussion of the ARP.
3 Commission staff note that matching service utilities may be affected by recent amendments made to the *Securities Act* (Ontario) (Act). Pursuant to the amendments, a matching service utility carrying on business in Ontario may be required to apply either for recognition as a clearing agency under section 21.2 of the Act or for an exemption from such recognition under section 147 of the Act. See Section 144 of the *Securities Transfer Act*, 2006, S.O. 2006, c. 8 (Bill 41) and section 2 of Schedule 20 – *Securities Act* – of the *Budget Measures Act*, 2005 (No. 2), S.O. 2005, c. 31 (Bill 18).

## C. SUBSTANCE AND PURPOSE OF PROPOSED RULE

The Rule will designate matching service utilities as market participants under the Act. As a result, certain provisions of the Act that apply to market participants generally will also apply to matching service utilities, including the books and records requirements of s. 19, the ability of Commission staff to perform compliance reviews under section 20, and the Commission's power to make a public interest order under clause 4 of subsection 127(1) of the Act.

## D. SUMMARY OF PROPOSED RULE

The Rule will designate a matching service utility that delivers Form 24-101F3 to the Commission under NI 24-101 as a "market participant" for purposes of the definition of that term in subsection 1(1) of the Act.

## E. AUTHORITY FOR PROPOSED RULE

Paragraph 40 of subsection 143(1) of the Act provides the Commission with authority to adopt this Rule. It authorizes the Commission to "make rules respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of the Act, including…designating a person or company for the purpose of the definition of 'market participant'."

## F. RELATED INSTRUMENT

The proposed Rule is related to NI 24-101, which came into force on April 1, 2007. Part 6 of NI 24-101 will come into force in Ontario on October 1, 2007, assuming this Rule is in force.

## G. ALTERNATIVES CONSIDERED

No alternatives were considered to the adoption of this Rule.

## H. UNPUBLISHED MATERIALS

In proposing this Rule, the Commission has not relied on any significant unpublished study, report, decision or other material.

## I. ANTICIPATED COSTS AND BENEFITS

This Rule may impose costs on matching service utilities as they will be subject to the general market participant requirements of the Act. However, it will benefit the Ontario capital markets and protect investors by making matching service utilities subject to certain provisions that apply to all market participants generally under the Act.

## J. REGULATIONS TO BE AMENDED OR REVOKED (ONTARIO)

None.

## K. TEXT OF THE PROPOSED RULE

The text of the proposed Rule follows.

**PROPOSED ONTARIO SECURITIES COMMISSION RULE**
**RULE 24-501**

**DESIGNATION AS MARKET PARTICIPANT**

**PART 1 DEFINITIONS**

**1.1 Definitions** – In this Rule,

"matching service utility" has the same meaning as in NI 24-101;

"NI 24-101" means National Instrument 24-101 *Institutional Trade Matching and Settlement*.

**PART 2 DESIGNATION AS MARKET PARTICIPANT**

**2.1 Matching Service Utility** – A matching service utility that delivers Form 24-101F3 under NI 24-101 to the Commission is designated as a market participant for the purposes of the Act.

**PART 3 EFFECTIVE DATE**

**3.1 Effective Date** – This Rule comes into force on October 1, 2007.

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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 FORMS 45-106F1 AND 45-501F1**

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/06/2007 | 67 | Aberdeen International Inc. - Receipts | 60,000,000.00 | 75,000,000.00 |
| 06/14/2007 | 1 | Airesurf Networks Holdings Inc. - Common Shares | 6,000.00 | 120,000.00 |
| 06/07/2007 | 23 | Airline Intelligence Systems Inc. - Common Shares | 2,559,400.00 | 1,279,700.00 |
| 06/12/2007 | 6 | Alberta Wind Energy Corporation - Flow-Through Shares | 345,000.00 | 86,250.00 |
| 06/13/2007 | 10 | Alliance Mining Corp. - Units | 111,250.00 | 445,000.00 |
| 06/15/2007 to 06/26/2007 | 17 | Americas Petrogas Inc. - Common Shares | 4,000,445.00 | 7,269,900.00 |
| 03/22/2007 | 30 | Atlas Minerals Inc. - Units | 1,892,000.00 | 6,306,667.00 |
| 06/08/2007 | 49 | Aura Silver Resources Inc. - Units | 2,057,000.00 | 46,750,000.00 |
| 06/12/2007 | 1 | Avista Onshore Feeder Fund L.P. - Units | 1,581,450.00 | 1,500,000.00 |
| 05/23/2007 | 1 | A.M. Castle & Co. - Common Shares | 165,000.00 | 5,000.00 |
| 06/12/2007 | 59 | BA Energy Inc. - Common Shares | 42,889,560.00 | 5,361,195.00 |
| 06/19/2007 | 3 | Bare Escentuals Inc. - Common Shares | 21,467,986.00 | 545,000.00 |
| 06/19/2007 | 1 | Beaufield Consolidated Resources Inc. - Common Shares | 296,000.00 | 800,000.00 |
| 06/19/2007 | 13 | BHF Waster Management Limited Partnership - Limited Partnership Units | 1,100,000.00 | 110,000.00 |
| 06/15/2007 | 1 | Bison Income Trust II - Trust Units | 20,936.00 | 2,093.60 |
| 02/01/2005 | 1 | Blackstone Market Opportunities Offshore Fund SPC - Common Shares | 6,200,000.00 | 50,000.00 |
| 06/12/2007 | 149 | Boss Power Corp. - Common Shares | 111,260,000.00 | 52,500,000.00 |
| 06/14/2007 | 3 | Bullion Management Group Inc. - Units | 65,000.00 | 86,667.00 |
| 06/19/2007 | 2 | BWAY Holding Company - Common Shares | 5,680,369.20 | 350,900.00 |
| 05/11/2007 | 1 | Canarc Resources Corp. - Common Shares | 18,900.00 | 30,000.00 |
| 06/07/2007 | 41 | Candente Resource Corp. - Common Shares | 17,120,831.00 | 13,169,870.00 |
| 06/21/2007 | 7 | Carina Energy Inc. - Common Shares | 149,250.00 | N/A |
| 06/08/2007 | 2 | Caxton Global Investments Pref. Class E - Preferred Shares | 2,140,315.00 | 3,350.00 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/13/2007 to 06/26/2007 | 17 | Celestial Energy Inc. - Common Shares | 2,000,000.00 | 6,000,000.00 |
| 05/23/2007 | 10 | China One Corporation - Common Shares | 100,000.00 | 1,000,000.00 |
| 06/07/2007 | 2 | Clearly Canadian Beverage Corporation - Common Shares | 0.00 | 630,000.00 |
| 06/12/2007 | 2 | Clondalkin Acquisition B.V. - Notes | 4,255,600.00 | 4,000.00 |
| 06/05/2007 to 06/14/2007 | 20 | CMC Markets Canada Inc. - Contracts for Differences | 137,000.00 | 20.00 |
| 06/12/2007 to 06/13/2007 | 200 | Coastport Capital Inc. - Units | 8,048,740.00 | 10,270,000.00 |
| 06/14/2007 | 1 | Cogitore Resources Inc. - Common Shares | 0.00 | 216,216.00 |
| 06/18/2007 | 1 | Columbia Yukon Explorations Inc. - Flow-Through Shares | 3,000,000.00 | 1,500,000.00 |
| 06/14/2007 | 1 | Conporec Inc. - Common Shares | 140,000.00 | 500,000.00 |
| 06/06/2007 | 37 | Corex Gold Corp - Units | 5,004,000.00 | 5,560,000.00 |
| 11/08/2006 to 12/29/2006 | 10 | Cumberland Opportunities Fund - Units | 646,700.00 | 65,333.04 |
| 06/25/2007 | 1 | Desert Gold Ventures Inc. - Common Shares | 17,490.00 | 29,150.00 |
| 05/07/2007 to 05/18/2007 | 18 | Eiger Technology Inc. - Warrants | 535,500.00 | N/A |
| 06/01/2007 | 1 | Elmwood Investment Partners LP - Limited Partnership Interest | 308,865.00 | N/A |
| 06/08/2007 | 1 | Embotics Corporation - Common Shares | 1,000,000.00 | 100,000.00 |
| 06/06/2007 | 111 | EnerGulf Resources Inc. - Units | 4,959,500.00 | 7,085,000.00 |
| 06/08/2007 | 18 | Epsilon Energy Ltd. - Units | 3,664,590.00 | 1,380,000.00 |
| 06/16/2007 | 4 | Equimor Mortgage Investment Corporation - N/A | 361,250.00 | N/A |
| 06/14/2007 | 1 | Explor Resources Inc. - Units | 160,000.00 | 800,000.00 |
| 06/19/2007 | 4 | Exploration Orex Inc. - Common Shares | 750,000.00 | 4,285,714.00 |
| 06/18/2007 | 1 | First Leaside Expansion Limited Partnership - Notes | 100,000.00 | 100,000.00 |
| 06/13/2007 to 06/15/2007 | 2 | First Leaside Fund - Trust Units | 200,000.00 | 200,000.00 |
| 06/04/2007 | 1 | First Leaside Properties Limited Partnership - Notes | 3,209.83 | 3,027.00 |
| 06/06/2007 to 06/07/2007 | 2 | First Leaside Properties Limited Partnership - Notes | 275,000.00 | 275,000.00 |
| 06/13/2007 | 1 | First Leaside Properties Limited Partnership - Notes | 21,344.00 | 20,000.00 |
| 06/14/2007 | 1 | First Leaside Unity Limited Partnership - Notes | 90,000.00 | 90,000.00 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/07/2007 | 1 | First Leaside Wealth Management Inc. - Preferred Shares | 100,000.00 | 100,000.00 |
| 06/14/2007 to 06/15/2007 | 1 | First Leaside Wealth Management Inc. - Preferred Shares | 150,000.00 | 150,000.00 |
| 06/18/2007 | 68 | Golden Arrow Resources Corporation - Units | 6,775,000.00 | 5,420,000.00 |
| 06/11/2007 to 06/19/2007 | 5 | Golden Chalice Resources Inc. - Common Shares | 202,625.00 | 700,000.00 |
| 05/31/2007 | 224 | Goldrea Resources Corp. - Units | 3,755,353.00 | 17,592,253.00 |
| 06/08/2007 | 576 | Graham Business Trust - Units | 22,293,645.00 | 19,030.00 |
| 06/08/2007 | 576 | Graham Income Trust - Units | 25,433,595.00 | 19,030.00 |
| 06/21/2007 | 124 | Hanwei Energy Services Corp. - Warrants | 45,000,000.00 | 9,000,000.00 |
| 06/20/2007 | 2 | Holms Master Issuer PLC - Notes | 600,000.00 | N/A |
| 06/14/2007 | 101 | Hudson Resources Inc. - Units | 6,000,000.00 | 6,000,000.00 |
| 06/04/2007 | 1 | HydraLogic Systems Inc. - Common Shares | 545,000.00 | 1,295,627.00 |
| 06/06/2007 | 1 | ICS Copper Systems Ltd. - Units | 1,000,000.00 | 1,000,000.00 |
| 06/05/2007 to 06/11/2007 | 8 | IGW Real Estate Investment Trust - Trust Units | 761,146.80 | 744,034.00 |
| 06/13/2007 | 8 | Indian Ocean Gems Company - Units | 901,000.00 | 3,504,000.00 |
| 06/07/2007 | 1 | Innovapost Inc. - Common Shares | 2,500,000.00 | 2,500,000.00 |
| 06/12/2007 | 1 | International Millennium Mining Corp. - Common Shares | 25,000.00 | 100,000.00 |
| 06/13/2007 | 23 | JER Envirotech International Corp. - Units | 2,052,220.20 | 3,420,367.00 |
| 06/08/2007 | 1 | KBSH Private - Balanced Registered Fund - Units | 18,516.02 | 1,613.32 |
| 06/15/2007 | 1 | KBSH Private - Canadian Equity Fund - Units | 3,599.00 | 185.13 |
| 05/10/2007 | 1 | KBSH Private - Global Value Fund - Units | 149,000.00 | 13,841.15 |
| 06/11/2007 | 1 | Klondike Gold Corp. - Common Shares | 56,000.00 | 200,000.00 |
| 06/22/2007 | 35 | Lakewood Mining Co. Ltd - Common Shares | 583,914.00 | 5,839,140.00 |
| 06/14/2007 | 37 | Lucky Strike Resources Ltd. - Units | 630,000.00 | 7,000,000.00 |
| 06/11/2007 | 1 | Macarthur Minerals Ltd. - Units | 1,400,000.00 | 1,000,000.00 |
| 01/04/2007 | 2 | Macquarie European Infrastructure Fund II - Units | 87,049,550.00 | N/A |
| 06/20/2007 | 38 | Marksmen Resources Ltd. - Flow-Through Shares | 2,045,794.95 | 13,638,633.00 |
| 06/20/2007 | 33 | Maxim Resources Inc. - Units | 906,900.00 | 3,023,000.00 |
| 06/12/2007 | 60 | Mengold Resources Inc. - Common Shares | 0.00 | 1,976,000.00 |
| 06/07/2007 | 40 | Merrex Gold Inc. - Units | 7,402,400.00 | 7,792,000.00 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/12/2007 | 74 | Midasco Capital Corp. - Units | 3,750,000.00 | 15,000,000.00 |
| 06/14/2007 | 7 | Midlands Minerals Corporation - Units | 2,185,750.00 | 6,245,000.00 |
| 06/01/2007 | 78 | Mohave Exploration and Production Inc. - Units | 10,750,000.00 | 43,000,000.00 |
| 06/13/2007 | 1 | Mountain Boy Minerals Ltd. - Common Shares | 185,000.00 | 250,000.00 |
| 05/31/2007 | 68 | Nass Valley Gateway Ltd. - Units | 1,058,041.25 | 326,130.00 |
| 06/12/2007 | 22 | New Millennium Capital Corp. - Common Shares | 4,000,000.50 | 2,666,667.00 |
| 06/12/2007 | 5 | New Millennium Capital Corp. - Common Shares | 6,999,800.00 | 11,290,000.00 |
| 06/22/2007 | 7 | New Sage Energy Corp. - Units | 1,359,000.00 | 3,397,500.00 |
| 06/12/2007 to 06/16/2007 | 2 | New Solutions Financial (II) Corporation - Debentures | 70,000.00 | 2.00 |
| 06/05/2007 | 53 | Nord Resources Corporation - Warrants | 23,000,025.00 | 30,666,700.00 |
| 06/13/2007 | 1 | Norrep II Class of Norrep Opportunities Corp. - Units | 51,429,051.72 | 1,501,920.00 |
| 06/11/2007 | 70 | North West Upgrading Inc. - Common Shares | 153,123,411.50 | 36,029,038.00 |
| 06/15/2007 | 39 | Northern Vision Development Limited Partnership - Limited Partnership Units | 5,407,006.00 | 952,334.00 |
| 05/23/2007 | 25 | NovaDaq Technologies Inc. - Common Shares | 30,000,000.00 | 4,000,000.00 |
| 06/12/2007 | 1 | Omniture Inc - Common Shares | 48,410.59 | 2,500.00 |
| 06/21/2007 | 68 | Opal Energy Corp. - Common Shares | 25,000,000.00 | 125,000,000.00 |
| 05/30/2007 to 06/13/2007 | 2 | Open Access Limited - Units | 150,000.00 | 6.00 |
| 06/11/2007 | 12 | Oriel Resources plc - Common Shares | 103,954,947.00 | 80,000,000.00 |
| 06/26/2007 | 2 | Panda Capital Inc. - Common Shares | 2,500.00 | 250,000.00 |
| 06/08/2007 | 112 | Peace Arch Entertainment Group Inc. - Common Shares | 33,000,000.00 | 13,200,000.00 |
| 06/12/2007 | 6 | Playfair Mining Ltd. - Common Shares | 1,750,000.00 | 291,664.00 |
| 02/01/2007 | 54 | Portage Minerals Inc. - Common Shares | 836,600.00 | 13,943,333.00 |
| 06/14/2007 | 8 | Prize Mining Corporation - Units | 495,000.00 | 1,980,000.00 |
| 06/15/2007 | 3 | Protexis Inc. - Preferred Shares | 6,466,173.58 | 23,643,528.00 |
| 06/12/2007 | 14 | Pure Diamonds Exploration Inc. - Flow-Through Shares | 2,629,560.00 | 9,391,285.00 |
| 06/08/2007 | 97 | Red Hill Energy Inc. - Units | 2,430,000.00 | 2,440,000.00 |
| 06/08/2007 | 61 | RJK Explorations Ltd. - Units | 1,430,000.00 | N/A |
| 06/18/2007 | 1 | Robex Resources Inc. - Units | 499,999.77 | 1,851,851.00 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/08/2007 | 6 | Rocmec Mining Inc. - Units | 1,250,000.00 | 5,952,378.00 |
| 05/09/2007 | 76 | Rolling Thunder Exploration Ltd. - Common Shares | 8,685,002.05 | 3,227,273.00 |
| 06/12/2007 | 109 | RPT Uranium Corp. - Common Shares | 8,000,000.00 | 20,000,000.00 |
| 06/08/2007 | 88 | RPT Uranium Corp. - Units | 8,000,000.00 | 20,000,000.00 |
| 06/14/2007 | 106 | Run of River Power Inc. - Units | 11,000,000.00 | 27,500,000.00 |
| 06/15/2007 | 68 | San Gold Corporation - Units | 10,917,106.00 | 10,917,106.00 |
| 06/21/2007 | 158 | Seair Inc. - Debentures | 10,000,000.00 | N/A |
| 06/08/2007 | 139 | Serengeti Resources Inc. - Flow-Through Shares | 19,999,200.00 | 1,600,000.00 |
| 06/12/2007 | 77 | Shear Minerals Ltd. - Units | 5,999,915.00 | 2,666,500.00 |
| 01/03/2007 to 06/21/2007 | 7 | Shop to It Inc. - Units | 880,000.00 | 1,100,000.00 |
| 05/29/2007 | 1 | Sierra Geothermal Power Corp. - Options | 0.00 | 1,600,000.00 |
| 06/14/2007 to 06/19/2007 | 10 | Silvermet Inc. - Flow-Through Shares | 800,000.00 | 500,000.00 |
| 06/06/2007 | 87 | SNS Silver Corp. - Units | 12,249,625.00 | 9,799,700.00 |
| 06/11/2007 | 11 | Software Innovations Inc. - Common Shares | 11,358,103.00 | 20,890,372.00 |
| 06/11/2007 | 5 | Software Innovations Inc. - Debentures | 5,254,316.00 | 5,254.32 |
| 06/22/2007 | 119 | Southern Pacific Resources Corp. - Units | 32,001,500.00 | 11,035,000.00 |
| 01/14/2007 | 8 | Starbound Reinsurance II Limited - Loans | 57,693,600.00 | N/A |
| 06/12/2007 | 1 | StemPath Inc. - Debentures | 300,000.00 | N/A |
| 06/07/2007 | 15 | SunOpta BioProcess Inc. - Preferred Shares | 31,839,000.00 | 1,500,000.00 |
| 06/07/2007 | 25 | SunOpta Inc. - Warrants | 0.00 | 648,300.00 |
| 06/08/2007 | 18 | Superior Canadian Resources Inc. - Flow-Through Units | 161,500.00 | 161.50 |
| 06/19/2007 | 11 | Synex International Inc. - Common Shares | 2,304,060.00 | 3,491,000.00 |
| 06/14/2007 | 57 | Tau Finance Corp. - Receipts | 45,000,000.00 | 56,250,000.00 |
| 06/22/2007 | 76 | Terra 2007 Energy & Mining Flow-Through Limited Partnership - Limited Partnership Units | 4,272,000.00 | 42,720.00 |
| 06/15/2007 | 1 | Tiomin Resources Inc. - Common Shares | 10,878,170.00 | 72,521,134.00 |
| 06/08/2007 | 1 | TIR Systems Ltd. - Common Shares | 37,110,537.60 | 23,194,086.00 |
| 06/14/2007 | 11 | Trilogy Metals Inc. - Units | 800,000.00 | 10,000,000.00 |
| 06/11/2007 | 6 | TrueContext Corporation - Notes | 212,279.95 | N/A |
| 06/07/2007 | 23 | Verbina Ventures Inc. - Units | 500,000.00 | 1,000,000.00 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 06/15/2007 | 234 | Village Acres II Limited Partnership - Units | 10,062,500.00 | 402.50 |
| 06/12/2007 | 8 | Vivonet Incorporated - Notes | 550,000.00 | N/A |
| 06/12/2007 | 54 | Walton AZ Picacho View 1 Investment Corporation - Common Shares | 1,221,370.00 | 122,137.00 |
| 06/12/2007 | 56 | Walton AZ Picacho View Limited Partnership 1 - Units | 2,890,672.00 | 271,833.00 |
| 06/15/2007 | 61 | Walton Brant Land Acquisition Investment Corporation - Common Shares | 1,473,320.00 | 147,332.00 |
| 06/15/2007 | 17 | Walton Brant Land Acquisition Limited Partnership - Limited Partnership Units | 1,778,320.00 | 177,832.00 |
| 06/18/2007 | 3 | Westfield Holdings Limited - Trust Units | 37,925,764.48 | 2,140,588.00 |
| 06/05/2007 | 26 | Windarra Minerals Ltd. - Common Shares | 637,000.00 | 288,000.00 |
| 06/07/2007 | 1 | World Markets Umbrella Fund PLC - Common Shares | 63,675.68 | 982.80 |
| 06/13/2007 | 6 | Ying li Green Energy Holding Company Limited - Common Shares | 44,806,379.75 | 3,801,500.00 |

## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
BIOX Corporation
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated July 9, 2007
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
$* - *  Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
GMP Securities L.P.
Cormark Securities Inc.
Genuity Capital Markets G.P.
Dundee Securities Corporation
**Promoter(s):**
-
**Project** #1126692

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**Issuer Name:**
Bioxel Pharma Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus  dated July 6, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
$ * -  Units (each Unit consisting of one Common Share and one half of a Warrant) Price: $ * per Unit
**Underwriter(s) or Distributor(s):**
Paradigm Capital Inc.
Laurentian Bank Securities Inc.
**Promoter(s):**
-
**Project** #1126442

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**Issuer Name:**
Canadian Royalties Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated July 10, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
Raymond James Ltd.
**Promoter(s):**
-
**Project** #1127192

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**Issuer Name:**
ClareGold Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated July 4, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
$445,073,000.00 (Approximate) Commercial Mortgage Pass-Through Certificates, Series 2007-2
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
**Promoter(s):**
Canadian Imperial Bank of Commerce
**Project** #1125739

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**Issuer Name:**
DPF India Opportunities Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated July 9, 2007
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
Maximum $ * (* Units) Price: $10.00 per Unit Each Unit consists of a Trust Unit and a Warrant for one Trust Unit Minimum Purchase: 100 Units
**Underwriter(s) or Distributor(s):**
GMP Securities L.P.
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
CIBC World Markets Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
Goodman & Company, Investment Counsel Ltd.
**Project** #1126667

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**Issuer Name:**
Eminence Capital I Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated July 4, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
$6,000,000.00 - 12,000,000 Units PRICE: $0.50 per Unit
**Underwriter(s) or Distributor(s):**
M Partners Inc.
**Promoter(s):**
Hans Hager
**Project** #1126195

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**Issuer Name:**
Fortune Minerals Limited
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated July 10, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
$ * - * Units Price: $ * per Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
Desjardins Securities Inc.
Canccord Capital Corporation
**Promoter(s):**
-
**Project** #1127034

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**Issuer Name:**
MACCs Sustainable Yield Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated July 3, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
Warrants to Subscribe for up to .. Units Subscription Price: $.. per Unit (Upon the exercise of one Warrant for one Unit)
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
MACCs Administrator Inc.
**Project** #1125367

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**Issuer Name:**
MEGA Brands Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated July 10, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
$78,347,500.00 - 3,850,000 Common Shares Price: $20.35 per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
**Promoter(s):**
-
**Project** #1127112

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**Issuer Name:**
North American Energy Partners Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form PREP Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
$ * - 14,750,000 Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
Credit Suisse Securities (Canada), Inc.
UBS Securities Canada Inc.
CIBC World Markets Inc.
**Promoter(s):**
-
**Project** #1125977

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**Issuer Name:**
Northern Rivers Conservative Growth Fund
Northern Rivers Evolution Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated July 10, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
Series A, F and P Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Northern Rivers Capital Management Inc.
**Project** #1127160

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**Issuer Name:**
NovaBay Pharmaceuticals, Inc.
Principal Regulator - Ontario
**Type and Date:**
Third Amended and Restated Preliminary PREP Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
US$ * - * Shares Price: US$ * per Share
**Underwriter(s) or Distributor(s):**
Dundee Securities Corporation
**Promoter(s):**
-
**Project** #1051403

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**Issuer Name:**
Onco Petroleum Inc.
**Type and Date:**
Preliminary Prospectus dated June 29, 2007
Receipted on July 4, 2007
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1125316

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**Issuer Name:**
Preferred Energy Split Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
$ * (Maximum) $ * (Maximum) * Preferred Securities * Class A Shares Price: $10.00 per Preferred Security $15.00 per Class A Shares
**Underwriter(s) or Distributor(s):**
CIBC World Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Wellington West Capital Inc.
Berkshire Securities Inc.
Desjardins Securities Inc.
Jory Capital Inc.
Research Capital Corporation
Richardson Partners Financial Limited
**Promoter(s):**
Sentry Select Capital Corp.
**Project** #1126807

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**Issuer Name:**
RediShred Capital Corp.
Principal Regulator - Nova Scotia
**Type and Date:**
Preliminary CPC Prospectus dated July 4, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
$900,000.00 - (4,500,000 Common Shares) Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
**Promoter(s):**
Mark MacMillan
**Project** #1125653

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**Issuer Name:**
AGF Dividend Income Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated June 25, 2007 to the Simplified Prospectus and Annual Information Form dated April 20, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
Mutual Fund Securities Net Asset Value
**Underwriter(s) or Distributor(s):**
AGF Funds Inc.
**Promoter(s):**
-
**Project** #1066188

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**Issuer Name:**
Altamira Global 20 Fund
Altamira Global Financial Services Fund
Altamira e-business Fund
Altamira Biotechnology Fund
Altamira Precision Dow 30 Index Fund
Altamira Precision European Index Fund
Altamira Precision European RSP Index Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated June 29, 2007 to the Simplified Prospectuses and Annual Information Forms dated August 31, 2006
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
Mutual Fund Securities Net Asset Value
**Underwriter(s) or Distributor(s):**
Altamira Financial Services Ltd.
**Promoter(s):**
Altamira Investment Services Inc.
**Project** #967017

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**Issuer Name:**
Antamena Capital Corp.
Principal Regulator - British Columbia
**Type and Date:**
Final Prospectus dated July 4, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
$200,000.00 - 2,000,000 COMMON SHARES Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
**Promoter(s):**
Tim Gallagher
**Project** #1114064

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**Issuer Name:**
ATS Automation Tooling Systems Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
$110,209,634.00 - Rights to Subscribe for Common Shares Subscription Price: 3.35 Rights and $6.23 per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
UBS Securities Canada Inc.
**Promoter(s):**
-
**Project** #1122643

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**Issuer Name:**
Burgundy American Equity Fund
Burgundy Balanced Income Fund
Burgundy Bond Fund
Burgundy Canadian Equity Fund
Burgundy Compound Reinvestment Fund
Burgundy EAFE Fund
Burgundy European Equity Fund
Burgundy European Foundation Fund
Burgundy Focus Canadian Equity Fund
Burgundy Focus Equity RSP Fund
Burgundy Focus Japanese Equity Fund
Burgundy Foundation Trust Fund
Burgundy Money Market Fund
Burgundy Partners' Balanced RSP Fund
Burgundy Partners' Equity RSP Fund
Burgundy Partners' Global Fund
Burgundy Total Return Bond Fund
Burgundy U.S. Money Market Fund
**Type and Date:**
Amendment #1 dated July 5, 2007 to the Prospectus dated July 26, 2006
Receipted on July 9, 2007
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Burgundy Asset Management Ltd.
**Promoter(s):**
Burgundy Asset Management Ltd.
**Project** #958432

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**Issuer Name:**
Coro Mining Corp.
Principal Regulator - British Columbia
**Type and Date:**
Amendment #1 dated June 28, 2007 to the Prospectus dated June 12, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
Cdn $2.25 - 6,000,000 Shares
**Underwriter(s) or Distributor(s):**
Haywood Securities Inc.
RBC Dominion Securities Inc.
Dundee Securities Corporation
**Promoter(s):**
-
**Project** #1074196

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**Issuer Name:**
Ethical Income Fund
Ethical Monthly Income Fund
Ethical Balanced Fund
Ethical Canadian Dividend Fund
Ethical Canadian Index Fund
Ethical Growth Fund
Ethical Special Equity Fund
Ethical American Multi-Strategy Fund
Ethical Global Equity Fund
Ethical International Equity Fund
Ethical Advantage 2010 Fund
Ethical Advantage 2015 Fund
Ethical Advantage 2020 Fund
Ethical Advantage 2030 Fund
Ethical Advantage 2040 Fund
Principal Regulator - British Columbia
**Type and Date:**
Final Simplified Prospectuses and Annual Information Forms dated June 27, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
Class A, Class D and Class F Units
**Underwriter(s) or Distributor(s):**
Credential Asset Management Inc.
**Promoter(s):**
Ethical Funds Inc.
**Project** #1105458

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**Issuer Name:**
Fortune Valley Resources Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final Prospectus dated July 6, 2007
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
7,777,778 Units at $0.45 Per Unit for Gross Proceeds of $3,500,000.00
**Underwriter(s) or Distributor(s):**
Blackmont Capital Inc.
**Promoter(s):**
MICHAEL J. GINGLES
JOE KAJSZO
MAX ALBERTO OEMICK
WILLIAM C. HOWALD
**Project** #1108194

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**Issuer Name:**
GGOF CANADIAN BOND FUND (Mutual Fund, F Class and I Class Units )
GGOF CANADIAN MONEY MARKET FUND (Mutual Fund, Classic and F Class Units )
GGOF FLOATING RATE INCOME FUND (Mutual Fund, F Class and I Class Units )
GGOF GLOBAL BOND FUND (Mutual Fund, F Class and I Class Units )
GGOF HIGH YIELD BOND FUND (Mutual Fund, F Class and I Class Units )
GGOF MONTHLY DIVIDEND FUND LTD . (Mutual Fund, Classic and F Class Shares )
GGOF MONTHLY HIGH INCOME FUND (Mutual Fund, Classic and F Class Units )
GGOF MONTHLY HIGH INCOME FUND II (F, I) (Mutual Fund, F Class and I Class Units )
GGOF U.S. MONEY MARKET FUND (Mutual Fund and Classic Units )
GGOF AMERICAN EQUITY FUND LTD . (Mutual Fund, F Class and I Class Shares )
GGOF CANADIAN EQUITY FUND LTD . (Mutual Fund and F Class Shares ) (formerly GGOF Canadian Growth Fund Ltd.)
GGOF CANADIAN LARGE CAP EQUITY FUND (Mutual Fund, F Class and T Class Units )
GGOF DIVIDEND GROWTH FUND (Mutual Fund, F Class, I Class and T Class Units )
GGOF EMERGING MARKETS FUND (Mutual Fund, F Class and I Class Units )
GGOF ENTERPRISE FUND (Mutual Fund, F Class and I Class Units )
GGOF EUROPEAN EQUITY FUND (Mutual Fund, F Class, I Class and T Class Units )
GGOF GLOBAL ABSOLUTE RETURN FUND (Mutual Fund, F Class and T Class Units )
GGOF GLOBAL DIVIDEND GROWTH FUND (Mutual Fund, F Class and T Class Units )
GGOF GLOBAL EQUITY FUND (Mutual Fund, F Class and T Class Units )
GGOF GLOBAL REAL ESTATE FUND (Mutual Fund, F Class and T Class Units )
GGOF GLOBAL SMALL CAP FUND (Mutual Fund, F Class and I Class Units )
GGOF GLOBAL TECHNOLOGY FUND (Mutual Fund and F Class Units )
GGOF JAPANESE EQUITY FUND (Mutual Fund, F Class and I Class Units )
GGOF RESOURCE FUND (Mutual Fund and F Class Units )
GGOF ASIAN GROWTH AND INCOME FUND (Mutual Fund, F Class and I Class Units )
GGOF CANADIAN BALANCED FUND (Mutual Fund, F Class and T Class Units )
GGOF CANADIAN DIVERSIFIED MONTHLY INCOME FUND (Mutual Fund, F Class and I Class Units )
GGOF GLOBAL DIVERSIFIED FUND (Mutual Fund, F Class and T Class Units )
GGOF SMALL CAP GROWTH AND INCOME FUND (Mutual Fund and F Class Units )
GGOF U.S. DIVERSIFIED MONTHLY INCOME FUND (Mutual Fund and F Class Units )
GGOF INCOME SOLUTION (Mutual Fund, F Class and T Class Units )
GGOF CONSERVATIVE SOLUTION (Mutual Fund, F Class and T Class Units )
GGOF BALANCED SOLUTION (Mutual Fund, F Class and T Class Units )
GGOF GROWTH SOLUTION (Mutual Fund, F Class and T Class Units )
GGOF AGGRESSIVE GROWTH SOLUTION (Mutual Fund, F Class and T Class Units )
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses and Annual Information Forms dated July 5, 2007
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
Mutual Fund Units or Shares. Classic Units or Shares ("C"), F Class Units or Shares
("F") ,I Class Units or Shares ("I") and T Class Units (“T”)
**Underwriter(s) or Distributor(s):**
Guardian Group of Funds Ltd.
Jones Heward Investment Management Inc.
**Promoter(s):**
Guardian Group of Funds Ltd.
**Project** #1115194

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**Issuer Name:**
Intermap Technologies Corporation
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated July 6, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
$30,000,000.00 - 5,000,000 Common Shares at $6.00 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Adams Limited
Canaccord Capital Corporation
Orion Securities Inc.
Raymond James Ltd.
**Promoter(s):**
Brian Bullock
**Project** #1122938

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**Issuer Name:**
Kingsway 2007 General Partnership
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 4, 2007
Mutual Reliance Review System Receipt dated July 4, 2007
**Offering Price and Description:**
CDN$100,000,000.00 - 6% Senior Unsecured Debentures due July 11, 2012 Fully and Unconditionally Guaranteed by KINGSWAY FINANCIAL SERVICES INC. and KINGSWAY AMERICA INC
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
-
**Project** #1120997

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**Issuer Name:**
Mavrix Canada Fund (Class A and F Units)
Mavrix Diversified Fund (Class A and F Units)
Mavrix Dividend & Income Fund (Class A and F Units)
Mavrix Explorer Fund (Class A and F Units)
Mavrix Global Fund (Class A and F Units)
Mavrix Global Enterprise Fund (Class A and F Units)
Mavrix Growth Fund (Class A and F Units)
Mavrix Income Fund (Class A and F Units)
Mavrix Money Market Fund (Class A and H Units)
Mavrix Sierra Equity Fund (Class A and F Units)
Mavrix Small Companies Fund (Class A and F Units)
Mavrix Strategic Bond Fund (Class A and F Units)
Mavrix Multi Series Fund Ltd . - Canadian Equity Series (Mutual Fund Shares)
Mavrix Multi Series Fund Ltd . - Explorer Series (Mutual Fund Shares)
Mavrix Multi Series Fund Ltd . - Global Enterprise Series (Mutual Fund Shares)
Mavrix Multi Series Fund Ltd . - Growth Series (Mutual Fund Shares)
Mavrix Multi Series Fund Ltd . - Income Series (Mutual Fund Shares)
Mavrix Multi Series Fund Ltd . - Short Term Income Series (Mutual Fund Shares)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated June 29, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
Class A, F and H Units @ Net Asset Value
Mutual Fund Shares @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Mavrix Fund Management Inc.
**Project** #1107175

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**Issuer Name:**
New Flyer Industries Canada ULC
New Flyer Industries Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
C$110,097,000.00 - 9,410,000 Income Deposit Securities Price: C$11.70 per IDS
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Cormark Securities Inc.
**Promoter(s):**
-
**Project** #1122413, 1122412

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**Issuer Name:**
Northern Property Real Estate Investment Trust
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
$105,006,440.00 - 4,532,000 Units Price: $23.17 per Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc,
Scotia Capital Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
**Promoter(s):**
-
**Project** #1122452

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**Issuer Name:**
Nuvo Research Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 9, 2007
Mutual Reliance Review System Receipt dated July 10, 2007
**Offering Price and Description:**
$20,000,000.00 - 100,000,000 Units Each Unit consisting of One Common Share and One-Half of a Common Share Purchase Warrant Price: $0.20 per Unit
**Underwriter(s) or Distributor(s):**
Westwind Partners Inc.
Dundee Securities Corporation
Versant Partners Inc.
Clarus Securities Inc.
**Promoter(s):**
-
**Project** #1123474

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**Issuer Name:**
Quadrus Fixed Income Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated July 3, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
Mutual fund trust units at net asset value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1107981

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**Issuer Name:**
RBC DS All Equity Global Portfolio
RBC DS Balanced Global Portfolio
RBC DS Canadian Focus Fund
RBC DS Growth Global Portfolio
RBC DS International Focus Fund
RBC DS North American Focus Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated July 3, 2007 to the Simplified Prospectuses and Annual Information Forms dated October 27, 2006
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
Advisor Series Units and Series F Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
RBC Asset Management Inc.
**Project** #994946

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**Issuer Name:**
Redcorp Ventures Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated July 5, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
Up to $240,000,000.00 - Up to 140,000 D Units; and Up to 200,000,000 E Units Price: $1,000 per D Unit
$0.50 per E Unit
**Underwriter(s) or Distributor(s):**
Paradigm Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Octagon Capital Corporation
Blackmont Capital Inc.
MGI Securities Inc.
**Promoter(s):**
-
**Project** #1107927

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**Issuer Name:**
Redwood Diversified Equity Fund
Redwood Diversified Income Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses and Annual Information Forms dated July 6, 2007
Mutual Reliance Review System Receipt dated July 9, 2007
**Offering Price and Description:**
Series A, O and F Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Redwood Asset Management Inc.
**Project** #1113875

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**Issuer Name:**
Sandvine Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 6, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
$45,000,550.00 - 8,911,000 Common Shares Price: $5.05 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
-
**Project** #1122858

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**Issuer Name:**
Social Housing Canadian Bond Fund
Social Housing Canadian Equity Fund
Social Housing Canadian Money Market Fund
Social Housing Canadian Short-Term Bond Fund
**Type and Date:**
Final Simplified Prospectuses dated July 3, 2007
Receipted on July 4, 2007
**Offering Price and Description:**
Mutual fund units at net asset value
**Underwriter(s) or Distributor(s):**
Philips, Hager & North Investment Funds Ltd.
**Promoter(s):**
-
**Project** #1107130

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**Issuer Name:**
Visible Gold Mines Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Prospectus dated July 3, 2007
Mutual Reliance Review System Receipt dated July 5, 2007
**Offering Price and Description:**
Minimum Offering: 3,000 Units ($3,000,000.00); Maximum Offering: 5,000 Units ($5,000,000.00) Price: $1,000 per Unit
**Underwriter(s) or Distributor(s):**
Desjardins Securities Inc.
**Promoter(s):**
Fieldex Exploration Inc.
**Project #**1103650

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**Issuer Name:**
Quadrus Series, H Series and N Series Securities (unless otherwise indicated ) of:
Conservative Folio Fund
Moderate Folio Fund
Balanced Folio Fund (also offering D Series )
Advanced Folio Fund (also offering D Series )
Aggressive Folio Fund
Quadrus Cash Management Corporate Class
Quadrus Fixed Income Corporate Class
Quadrus Canadian Equity Corporate Class
Quadrus North American Specialty Corporate Class
(formerly Quadrus Canadian Specialty Corporate Class )
Quadrus U.S. and International Equity Corporate Class
Quadrus U.S. and International Specialty Corporate Class
Quadrus Eaton Vance U .S. Value Corporate Class
Quadrus Setanta Global Dividend Corporate Class
Quadrus Sionna Canadian Value Corporate Class
(Classes of Quadrus Corporate Class Inc .)
Quadrus Money Market Fund (Quadrus Series, H Series and Premium Series Securities only )
(formerly Mackenzie Maxxum Money Market Fund )
GWLIM Corporate Bond Fund
London Capital Canadian Bond Fund
(formerly LLIM Canadian Bond Fund )
London Capital Income Plus Fund
(formerly LLIM Income Plus Fund )
Quadrus Laketon Fixed Income Fund
Mackenzie Maxxum Canadian Balanced Fund (also offering D Series )
Quadrus Trimark Balanced Fund (N Series Securities only )
GWLIM Canadian Growth Fund
London Capital Canadian Diversified Equity Fund
(formerly LLIM Canadian Diversified Equity Fund )
London Capital Canadian Dividend Fund (also offering D Series )
Mackenzie Maxxum Dividend Fund (also offering D Series )
Mackenzie Maxxum Canadian Equity Growth Fund
Mackenzie Focus Canada Fund
Quadrus AIM Canadian Equity Growth Fund
GWLIM North American Mid Cap Fund
(formerly GWLIM Canadian Mid Cap Fund )
Mackenzie Universal Canadian Resource Fund
Mackenzie Universal Precious Metals Fund
London Capital U.S. Value Fund (also offering D Series )
Mackenzie Universal American Growth Class (Unhedged Class) of
Mackenzie Financial Capital Corporation
Mackenzie Universal Global Future Fund (Quadrus Series and H Series Securities only )
Mackenzie Universal U .S. Growth Leaders Fund (Quadrus Series and H Series Securities only )
Quadrus Templeton International Equity Fund (also offering D Series )
Quadrus Trimark Global Equity Fund
Mackenzie Ivy European Class
Mackenzie Focus Far East Class
Mackenzie Universal Emerging Markets Class
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated July 3, 2007
Mutual Reliance Review System Receipt dated July 6, 2007
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Quadrus Investment Services Ltd.
**Promoter(s):**
Mackenzie Financial Corporation
**Project #**1108180

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Change of Name | From:<br>Cundill Asset Management (Bermuda) Ltd.<br>To:<br>Asset Management (Bermuda) Ltd. | Non-Canadian Adviser (Investment Counsel & Portfolio Manager) | February 28, 2007 |
| Change of Name | From:<br>Dufferin Capital Inc.<br>To:<br>Bridgeport Asset Management Inc. | Investment Counsel & Portfolio Manager | May 11, 2007 |
| New Registration | CF Global Trading, LLC | Limited Market Dealer | July 6, 2007 |
| Change of Category | UBS Financial Services Inc. | From:<br>International Dealer<br>To:<br>International Dealer and International Adviser (Investment Counsel & Portfolio Manager) | July 6, 2007 |
| Consent to Suspension<br>(Rule 33-501 – Surrender of Registration) | Guardian Timing Services Inc. | Limited Market Dealer, Investment Counsel and Portfolio Manager | July 9, 2007 |
| New Registration | SNC-Lavalin Capital Inc. | Limited Market Dealer | July 10, 2007 |
| New Registration | Libertas Partners LLC | International Dealer | July 11, 2007 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 MFDA Hearing Panel Issues Decision and Reasons respecting Altimum Mutuals Inc. Settlement Hearing

**NEWS RELEASE**
**For immediate release**

**MFDA HEARING PANEL ISSUES DECISION AND REASONS RESPECTING ALTIMUM MUTUALS INC. SETTLEMENT HEARING**

**July 6, 2007** (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Decision and Reasons in connection with the settlement hearing held in Toronto, Ontario on June 15, 2007 in respect of Altimum Mutuals Inc.

A copy of the Decision and Reasons is available on the MFDA website 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 162 Members and their approximately 75,000 Approved Persons 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 MFDA Issues Notice of Hearing regarding Ravi Puri

**NEWS RELEASE**
**For immediate release**

**MFDA ISSUES NOTICE OF HEARING REGARDING RAVI PURI**

**July 6, 2007** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against Ravi Puri.

MFDA staff alleges in its Notice of Hearing that Mr. Puri engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

> Allegation #1: Commencing August 2006, the Respondent failed to attend for an interview as required by the MFDA in the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.
>
> Allegation #2: Between July 2002 and May 2005, the Respondent redeemed approximately $146,400 from the mutual fund accounts of 5 clients, directed the redemption proceeds to a company under his ownership or control, and failed to invest, return or otherwise account for the redemption proceeds, thereby failing to deal with the clients fairly, honestly and in good faith, contrary to MFDA Rule 2.1.1.
>
> Allegation #3: Between November 2003 and October 2004, the Respondent failed to invest, return or otherwise account for an additional $118,600 solicited and received from clients GZ and TP for the purpose of making various investments on their behalf, thereby failing to deal with clients GZ and TP fairly, honestly and in good faith, contrary to MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the Pacific Regional Council of the MFDA in the Hearing Room located at the offices of the MFDA at 650 West Georgia Street, Suite 1220, Vancouver, B.C. on Thursday, August 23, 2007 at 10:00 a.m. (Vancouver) or as soon thereafter as can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website 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 162 Members and their approximately 75,000 Approved Persons 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

### 13.1.3 MFDA Announces Change in the Previously Scheduled Date of the First Appearance in the Matter of John Moro

**NEWS RELEASE**
**For immediate release**

**MFDA ANNOUNCES CHANGE IN THE PREVIOUSLY SCHEDULED DATE OF THE FIRST APPEARANCE IN THE MATTER OF JOHN MORO**

**July 6, 2007** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced a change in the scheduled date for the first appearance in the above matter. The First Appearance that was initially scheduled for Wednesday, August 29, 2007 at 10:00 a.m. (Eastern) will now be taking place on **Thursday, August 30, 2007 at 11:00 a.m. (Eastern)** or as soon thereafter as can be held.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website 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 162 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

*For further information, please contact:*
Yvette MacDougall
Hearings Coordinator
(416) 943-4606 or ymacdougall@mfda.ca

### 13.1.4 MFDA Proposed Amendments to Policy 3 (Handling Client Complaints)

**MUTUAL FUND DEALERS ASSOCIATION**

**PROPOSED AMENDMENTS TO**
**POLICY 3 (HANDLING CLIENT COMPLAINTS)**

## I. OVERVIEW

### A. Current Rules

MFDA Policy 3 sets out general requirements with respect to the handling of complaints by Members. The current Policy requires Members to establish policies and procedures to deal effectively with client complaints and address issues that include client communications, record keeping and internal escalation of serious complaints.

### B. The Issues

MFDA staff has become aware of a number of procedural issues identified by clients that have filed complaints against Members and their Approved Persons. In order to improve upon the complaint process, further guidance is required with respect to the fair and prompt handling of complaints by Members. MFDA staff has also noted that further guidance is required regarding supervisory investigations to be conducted by Members following the receipt of a complaint.

### C. Objectives

The objective of the proposed amendments to Policy 3 are to provide guidance with respect to the standards that Members should have in place regarding complaint handling and supervisory investigations. The proposed amendments will essentially replace much of what is contained in the existing Policy 3.

### D. Effect of Proposed Amendments

The effect of the proposed amendments will be to clarify the obligations of Members and provide guidance as to the minimum standards Members must meet with respect to the fair and prompt handling of client complaints. The proposed amendments are also intended facilitate clarity and enhance access for clients seeking to file a complaint with a Member.

It is not expected that the proposed amendments will have other significant effects on Members, other market participants, market structure or competition or that the proposed amendments will result in significant additional costs for Members to comply with the proposed amendments.

## II. DETAILED ANALYSIS

### A. Relevant History

An Ontario Securities Commission ("OSC") Town Hall meeting was held in May 2005 and included staff of the OSC, the Investment Dealers Association ("IDA") and the Ombudsman for Banking Services and Investments ("OBSI"). One of the issues identified at that meeting was a lack of clarity and openness of complaint processes in the securities industry. Further meetings to discuss these issues were held between the MFDA, OSC, IDA and OBSI. Following these meetings, MFDA staff issued Member Regulation Notice MR-0059 ("MR-0059"), which provided guidance to Members on improving the clarity and consistency of communications with investors who have filed a complaints and provided guidance on the expectations of MFDA staff regarding Members' complaint handling processes. Much of the guidance provided by MFDA staff in MR-0059 has been incorporated into the proposed amended Policy 3.

### B. Proposed Amendments to Policy 3

The proposed amended Policy defines a complaint generally as any written statement of a client or prospective client alleging a grievance involving a Member or Approved Person of a Member. A complaint also included verbal statements of grievance relating to serious allegations such as theft and fraud.

As part of the proposed amended Policy Members will be required to facilitate access to their complaint handling process so that clients are informed of how and to whom they should file a complaint. Members will be required to provide a specific point of initial contact at head office for complaints or questions regarding the Member's complaint handling process. Members with websites will be required to post their complaint handling procedure on their website.

The proposed amended Policy will require Members to ensure that all client complaints are handled fairly and that there is a factual investigations and analysis of the matters specific to each complaint. The gathering of facts by Members must be based on a balanced approach and the analysis of those facts must be reasonable.

The proposed amended Policy will require that Members generally send an initial response to a complainant within 5 business days of receipt of a complaint. The initial response must include the name and contact information of the individual at the Member handling the complaint, a summary of the complaint handling process, a request to the complainant to send any additional information regarding their complaint to the Member and a copy of the Client Complaint Information Form ("CCIF").

The Member must conduct its investigation and analysis and provide a substantive response to the client within the time period expected of a Member acting diligently. The Member will be required to provide a substantive response generally within no more than six months of receipt of the complaint, and in most cases within less time. The substantive response letter must include an outline of the complaint, the Member's substantive decision and reasons for such, a copy of the CCIF and a reminder that the complainant has the right to consider presenting the complaint to OBSI and making a complaint to the MFDA.

The proposed amendments to Policy 3 will require Members to conduct a reasonable investigation into all client complaints. In addition, when serious misconduct is alleged the Member must conduct a detailed supervisory investigation regardless of how the information comes to the attention of the Member. The proposed amended Policy provides guidance as to the actions to be taken by the Member as part of a detailed investigation, such as interviewing relevant individuals, conducting branch reviews, reviewing files of Approved Persons including files in the custody and control of an Approved Person relating to outside business activities.

The amended Policy will also require that where complaints are received that relate to activities carried on by an Approved Person at another Member firm, the Approved Person and the predecessor Member must cooperate in sharing information with the firm that receives the complaint, in order to facilitate the complaint resolution process.

**C. Issues and Alternatives Considered**

No other alternatives were considered.

**D. Comparison with Similar Provisions**

The proposed amended Policy was compared to the complaint handling provisions of Proposed National Instrument 31-103 – Registration Requirements and the Proposed Companion Policy 31-103CP. A review of the ISO 10002-2004(E) standard on complaint handling was also conducted. IDA staff was consulted in the course of developing the proposed amended Policy to ensure that the proposed amendments are consistent with the approach to be taken by IDA staff as they consider changes to IDA requirements regarding complaint handling standards.

**E. Systems Impact of Amendments**

It is not anticipated that there will be a significant systems impact on Members as a result of the proposed amendments. Under the proposed Policy, Members will be required to track complaint aging in order to ensure that timelines set out in the proposed Policy are met. However, Members will be able to use the MFDA's complaints reporting system, the Member Event Tracking System ("METS"), to track aging of complaints reported through METS.

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

The Board has determined that the proposed amendments are in the best interests of the capital markets.

**G. Public Interest Objective**

The proposed amendments will establish complaint handling standards with respect to MFDA Members and Approved Persons that are consistent with standards to be followed by IDA members. The proposed amendments will assist in the protection of the investing public by providing clarity and consistency in the complaint handling processes of Member firms.

**III. COMMENTARY**

**A. Filing in Other Jurisdictions**

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

### B. Effectiveness

The proposed amendments are simple and effective.

### C. Process

The proposed Policy has been prepared in consultation with relevant departments within the MFDA and has been reviewed by the Policy Advisory Committee of the MFDA and the Regulatory Issues Committee of the Board. The MFDA Board of Directors approved the proposed amendments on June 15, 2007.

### E. Effective Date

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

## IV. SOURCES

MFDA Policy 3
MFDA Member Regulation Notice MR-0059
IDA Member Regulation Notice MR-0441
Proposed National Instrument 31-103 and Proposed Companion Policy 31-103CP
ISO Standard 10002-2004(E)

## V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments so that the issues referred to above may be considered by the Recognizing Regulators.

**The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments.** Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Anne Hamilton, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

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

Questions may be referred to:

Shaun Devlin
Vice-President, Enforcement
Mutual Fund Dealers Association of Canada
(416) 943-4672

## MFDA POLICY NO. 3

## ~~HANDLING CLIENT COMPLAINTS~~
## COMPLAINT HANDLING, SUPERVISORY INVESTIGATIONS AND INTERNAL DISCIPLINE

**~~Introduction~~**

~~This Policy establishes minimum industry standards for handling client complaints. A "complaint" shall be deemed to mean any written statement of a client or any person acting on behalf of a client alleging a grievance involving the conduct, business or affairs of the Member or any registered salesperson, partner, director or officer of the Member.~~

~~Although the definition of "complaint" refers to only written complaints, there may be instances where a Member receives a verbal complaint from a client which will warrant the same treatment as a written complaint. Such situations depend upon the nature and severity of the client's allegations and require the professional judgement of the Member's supervisory staff handling the complaint.~~

**~~Complaint Procedure~~**

~~Each Member must establish procedures to deal effectively with client complaints, which should include the following:~~

~~1. Each Member must acknowledge all client complaints.~~

~~2. Each Member must convey the results of its investigation of a client complaint in writing to the client in due course.~~

~~3. Client complaints involving the sales practices of a Member, its partners, directors, officers, salespersons or employees or agents must be handled by qualified sales supervisors/compliance staff.~~

~~4. Each Member must ensure that registered salespersons and their supervisors are made aware of all complaints filed by their clients.~~

~~5. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.~~

~~6. Each Member must maintain in a central place an orderly, up to date record of complaints together with follow up documentation regarding such complaints, for regular internal/external compliance reviews. For each complaint, the record should include the following information:~~
- ~~the date of the complaint;~~
- ~~the complainant's name;~~
- ~~the name of the person who is the subject of the complaint;~~
- ~~the security or services which are the subject of the complaint; and~~
- ~~the date and conclusions of the decision rendered in connection with the complaint.~~

~~This record must be retained for a period of seven years from the date of receipt of the complaint.~~

~~8. Each Member must establish procedures to ensure that breaches of MFDA By laws, Rules and Policies are subjected to appropriate internal disciplinary procedures.~~

~~9. When a Member finds complaints to be a significant factor, internal procedures and practices should be reviewed, with recommendations for changes to be submitted to the appropriate management level.~~

**~~Settlement Agreements and Dispositions of Securities-Related Claims~~**

~~No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with a client.~~

~~No Member or Approved Person of such Member may impose confidentiality restrictions on clients with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, self regulatory organization, stock exchange or other trading market as part of a resolution of a dispute or otherwise.~~

## I. Complaints

### Introduction

MFDA Rule 2.11 requires Members to establish and implement written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly. This Policy establishes minimum standards for the development and implementation of those procedures.

Compliance with the requirements of MFDA Rule 2.11 and this Policy must be supervised and monitored by the Member and its personnel in accordance with MFDA Rule 2.5.

### General

A "complaint" shall be deemed to include:

- any written statement, including electronic communications, of a client, or any person acting on behalf of a client, or of a prospective client who has dealt with a Member or Approved Person, alleging a grievance involving the Member, Approved Person of the Member or former Approved Person of the Member if the grievance involves matters that occurred while the Approved Person was an Approved Person of the Member;

- any written or verbal statement of grievance from a client or any other person relating to:

  (i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or

  (ii) engaging in securities related business outside of the Member; and

- any other verbal statement of grievance from a client for which the nature and severity of the client's allegations will warrant, in the professional judgement of the Member's supervisory staff handling the complaint, the same treatment as a written complaint.

### Client Access

At the time of account opening, Members must provide to new clients a written summary of the Member's complaint handling procedures, which is clear and can easily be understood by clients. On account opening, the Member must also provide a Client Complaint Information Form ("CCIF"), as approved by MFDA staff, describing complaint escalation options, including complaining to the Ombudsman for Banking Services and Investments (the "Ombudsman") and complaining to the MFDA.

Members must facilitate other access to their complaint handling procedures so that clients are informed as to how to file a complaint and to whom they should address a complaint. For example, Members who maintain a website must post their complaint handling procedures on their website.

Member procedures must provide a specific point of initial contact at head office for complaints or information about the Member's complaint handling process. This contact may be a designated person or may be a general inbox or telephone number that is continuously monitored. Members may also advise clients to address their complaints to the Approved Person servicing their account or to the Branch Manager supervising the Approved Person.

### Fair Handling of Client Complaints

To achieve the objective of handling complaints fairly, Members' complaint handling procedures must include standards that allow for a factual investigation and an analysis of the matters specific to the complaint. Members must not have policies that allow for complaints to be dismissed without due consideration of the facts of each case. There must be a balanced approach to the gathering of facts that objectively considers the interests of the complainant, the Approved Person and the Member.

The basis of the Member's analysis must be reasonable. For example, a suitability complaint must be considered in light of the same principles that would be applied by a reasonable Member in conducting a suitability review, which would include an acknowledgement of the complainant's stated risk tolerance. It would not be reasonable for a Member to assess suitability based on a risk level presumed by the Member that is higher than that indicated by the complainant. A further example of an unreasonable analysis is where a Member dismisses a complaint due to a simple uncorroborated denial by the Approved Person notwithstanding evidence in support of the complainant.

A Member's obligation to handle complaints in accordance with this Policy is not altered when a complainant engages legal counsel in the complaint process. Where litigation is commenced by the complainant, the Member is expected to participate in

the litigation process in a timely manner in accordance with the rules of procedure of the applicable jurisdiction.

The Member's review of the complaint must result in the Member's substantive response to the complainant. Examples of an appropriate substantive response include a fair offer to resolve the complaint or a denial of the complaint with reasons. MFDA staff does not require that the complainant accept the Member's offer in order for the offer to be considered fair.

**Prompt Handling of Client Complaints**

Upon receipt of a client complaint, each Member must send an initial response letter to the complainant within a reasonable time, and generally within 5 business days of receipt of the complaint.

The Member must handle the complaint and provide its substantive response within the time period expected of a Member acting diligently in the circumstances. The time period may vary depending on the complexity of the matter. The Member should determine its substantive response and notify the complainant in writing within no more than six months of receipt of the complaint, although in most cases the Member will be expected to do so within less time.

Further, staff recognizes that, if the complainant fails to co-operate during the complaint resolution process, or if the matter requires an extensive amount of fact-finding or complex legal analysis, time frames for the substantive response may need to be extended. In cases where a substantive response will not be provided within six months, the Member must advise the complainant as such and provide an explanation for the delay.

It is not required that the complainant accept the Member's substantive response. Where the Member has communicated its substantive response, the Member must continue to proactively address further communications from the complainant in a timely manner until no further action on the part of the Member is required.

**Complaint Procedures**

Each Member's procedures for complaint handling must include the following:

1. **Initial Response** – The initial response letter must include the following information:

   - A written acknowledgment of the complaint;
   - The name, job title and full contact information of the individual at the Member handling the complaint;
   - A statement indicating that the complainant should contact the individual at the Member handling the complaint if he/she would like to inquire about the status of the complaint;
   - A summary of the Member's internal complaint handling process, including general timelines for providing the Member's response to complaints;
   - A request to the complainant for any additional reasonable information required to resolve the complaint; and
   - A reference to the CCIF, a copy of which must be included for the complainant.

2. **Substantive Response** – The substantive response letter, which Members must provide to the complainant, may be accompanied by a summary of the Member's complaint handling procedures and must include a copy of the CCIF. The substantive response letter to complainants should also include the following information:

   - An outline of the complaint;
   - The Member's substantive decision on the complaint, including reasons for the decision; and
   - A reminder to the complainant that he/she has the right to consider: (i) presenting the complaint to the Ombudsman which will consider complaints brought to it within six months of the substantive response letter; or (ii) making a complaint to the MFDA.

3. All client complaints and supervisory obligations must be handled by qualified sales supervisors/compliance staff. Generally, individuals who are the subject of a complaint should not handle the complaint unless other qualified supervisory staff is not available.

4. Each Approved Person must report all complaints and other information relevant to this Policy to the Member as required under MFDA Policy 6.

5. Each Member must ensure that the relevant Approved Persons and their supervisors and compliance officers are made aware of all complaints.

6. Each Member must put procedures in place so that senior management is made aware of complaints of serious misconduct and of all legal actions.

7. Each Member must maintain in a central place an orderly, up-to-date record of complaints together with follow-up documentation regarding such complaints, for regular internal/external compliance reviews. For each complaint, the record should include the following information:

   - the date of the complaint;
   - the complainant's name;
   - the name of the person who is the subject of the complaint;
   - the security or services which are the subject of the complaint; and
   - the date and conclusions of the decision rendered in connection with the complaint.

   Members may use the electronic reporting system designated under MFDA Policy 6 (the "Member Event Tracking System" or "METS") as their complaint log for those complaints reported on METS. However, Members are reminded that they must also maintain a complaint log of their service complaints.

8. Members must monitor information on complaints and supervisory investigations and should note trends in risk, including those related to specific Approved Persons or branches, subject matter, product types and procedures. When a Member finds this activity to indicate material risk, internal procedures and practices must be reviewed and appropriate supervisory or other action must be taken.

9. Where the events relating to a complaint took place in part at another Member or a member of another SRO, Members and Approved Persons must cooperate with other Members or SRO members in the sharing of information necessary to address the complaint.

**Settlement Agreements**

No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation or make any restitution to a client.

No Member or Approved Person of such Member may impose confidentiality restrictions on clients or a requirement to withdraw a complaint with respect to the MFDA or a securities commission, regulatory authority, law enforcement agency, SRO, stock exchange or other trading market as part of a resolution of a dispute or otherwise.

**II. Supervisory Investigations**

As noted above, a Member must conduct a reasonable investigation into all client complaints. The level of an investigation will in part depend on the severity of the allegation and the complexity of the issues.

In the case of certain serious cases outlined below, the Member has a duty to conduct a detailed investigation regardless of how the information came to the attention of the Member. For example, such information may, instead of coming through a complaint, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients. In addition, this duty arises whether the information comes to the Member in written or verbal form. If the information comes to the attention of the Member through a complaint the duty to conduct the supervisory investigation continues when a complainant purports to withdraw the complaint or indicates satisfaction with the result of the Member's complaint handling.

A Member has a duty to conduct a detailed investigation where it receives information to suggest the possibility that the Member or any current or former Approved Person has or may have contravened any provision of any law or has contravened any regulatory requirement, relating to:

(i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or

(ii) engaging in securities related business outside of the Member;

(iii) engaging in an undeclared occupation outside the Member; or

(iv) personal financial dealings with a client.

The detailed investigation in the circumstances may include interviewing:

- the individuals of concern;
- related supervisory personnel;
- other branch staff;

- head office personnel; or
- external individuals who brought the information to the Member's attention.

The detailed investigation may also require:

- conducting a review at the branch or sub-branch;
- reviewing files of the Approved Person relating to Member business; or
- reviewing files and other documents in the Approved Person's custody or control that relate to outside business, where there is a reasonable possibility that such information is relevant to the investigation. Members have the right to require such information to meet their supervisory responsibilities and Approved Persons have an obligation to cooperate with such requests.

**III. Internal Discipline**

Each Member must establish procedures to ensure that breaches of MFDA By-laws, Rules and Policies are subjected to appropriate internal disciplinary measures.

**IV. Record Retention**

Documentation associated with Member's activity under this Policy shall be maintained for a minimum of 7 years from termination of the Member's relationship with the client and made available to the MFDA upon request.

# Index

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