The Ontario Securities Commission

OSC Bulletin

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

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JULY 20, 2007

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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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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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

July 20, 2007 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 M. MacKewn in attendance for Staff Panel: RLS/ST
July 30, 2007 11:00 a.m.	**Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney** s. 127 and 127.1 J. Superina in attendance for Staff Panel: RLS/DLK/ST
August 7, 2007 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** s. 127 H. Craig in attendance for Staff Panel: PJL/ST
September 4, 2007 2:30 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s.127 and 127.1 D. Ferris in attendance for Staff Panel: TBA

September 5, 2007 10:00 a.m.	***AiT Advanced Information Technologies Corporation, *Bernard Jude Ashe and Deborah Weinstein** s. 127 K. Manarin in attendance for Staff Panel: WSW/HPH/CSP * Settlement Agreements approved February 26, 2007
September 6, 2007 10:00 a.m.	**Jose Castaneda** s. 127 and 127.1 H. Craig in attendance for Staff Panel: WSW/DLK
September 11, 2007 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** s. 127(1) & (5) Sean Horgan in attendance for Staff Panel: JEAT/ST
September 17, 2007 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s.127 P. Foy in attendance for Staff Panel: WSW/DLK
September 28, 2007 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.** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
September 28, 2007 10:00 a.m.	**Stanton De Freitas** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
October 9, 2007 10:00 a.m.	**John Daubney and Cheryl Littler** s. 127 and 127.1 A.Clark in attendance for Staff Panel: TBA
October 9, 2007 10:00 a.m.	***Philip Services Corp. and Robert Waxman** s. 127 K. Manarin/M. Adams in attendance for Staff Panel: TBA Colin Soule settled November 25, 2005 Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey and John Woodcroft settled March 3, 2006 * Notice of Withdrawal issued April 26, 2007

October 12, 2007 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
October 22, 2007 10:00 a.m.	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 H. Craig in attendance for Staff Panel: TBA
October 29, 2007 10:00 a.m.	**Mega-C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** S. 127 A. Sonnen in attendance for Staff Panel: TBA
November 12, 2007 10:00 a.m.	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s.127 J. Superina in attendance for Staff Panel: TBA
December 10, 2007 10:00 a.m.	**Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans** s. 127 & 127(1) H. Craig in attendance for Staff Panel: TBA
April 2, 2008 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.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 & 127.1 I. Smith in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**First Global Ventures, S.A., Allen Grossman and Alan Marsh Shuman** s. 127 D. Ferris in attendance for Staff Panel: WSW/ST/MCH
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 K. Daniels in attendance for Staff Panel: TBA

TBA **Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA **Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries**

s. 127 & 127.1

P. Foy in attendance for Staff

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

1.1.2 CSA Staff Notice 44-304 - Linked Notes Distributed under Shelf Prospectus System

CSA STAFF NOTICE 44-304

LINKED NOTES DISTRIBUTED
UNDER SHELF PROSPECTUS SYSTEM

Introduction

CSA staff (we) have noticed an increase in the use of the shelf prospectus system for the distribution of linked notes. For purposes of this notice, a linked note is a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102)) for which the amount payable is determined by reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the linked note issuer.

These linked notes are generally securities issued as part of a medium term note program established by a bank or another financial institution. The underlying interest is frequently one or more stock indices, equities, commodities, investment funds or notional reference portfolios. Linked notes are frequently targeted at the retail market.

This Notice provides guidance to issuers that intend to qualify linked notes for distribution by way of a shelf prospectus. It includes:

- a description of the concerns we have identified in prospectus disclosure for linked notes offered under the shelf prospectus system;
- a description of some things we think an issuer of linked notes should consider in deciding how to comply with the requirement for a prospectus to provide full, true and plain disclosure of all material facts relating to the securities being offered (the full, true and plain disclosure requirement);
- notice to issuers of linked notes that, before exercising our discretion to receipt a base shelf prospectus that qualifies linked notes, we will ask the issuer to file an undertaking to pre-clear prospectus supplements or templates of prospectus supplements pertaining to linked notes that the issuer has not previously distributed in a jurisdiction in Canada; and
- a description of the pre-clearance process we will follow.

Disclosure concerns

The substantive details of linked note offerings are not typically contained in the base shelf prospectus - a document that is subject to regulatory review in advance of distribution. Often those details are set out in a lengthy prospectus supplement. Unless the issuer considers the prospectus supplement to be for a “novel” derivative that is subject to regulatory pre-clearance under NI 44-102, it is generally filed with the regulators after the distribution has already taken place. As a result, any review of the prospectus supplement is on a post-distribution basis.

Since summer 2006, we have asked issuers filing base shelf prospectuses to file interim undertakings to pre-clear certain prospectus supplements pertaining to linked notes before exercising our discretion to receipt the base shelf prospectus. As a result, we have reviewed and pre-cleared most of the prospectus supplements qualifying linked note distributions since that time. In many of these cases, our review resulted in the inclusion of additional disclosure that we think was necessary for the shelf prospectus, the prospectus supplement and documents incorporated by reference to comply with the full, true and plain disclosure requirement. The general disclosure matters discussed below highlight the focus of our pre-clearance reviews.

Disclosure in prospectus supplements about linked notes

Under the securities legislation of each jurisdiction, an issuer’s prospectus must provide full, true and plain disclosure of all material facts relating to the securities offered by the prospectus. When an issuer is using the shelf prospectus system under NI 44-102, the full, true and plain disclosure requirement can be met by the combination of disclosure in the base shelf prospectus, the prospectus supplement and other documents the instrument permits the issuer to incorporate by reference.

This Notice describes some areas we think an issuer should consider in meeting the full, true and plain disclosure requirement for linked note offerings. CSA staff are currently applying the disclosure standards discussed below in reviewing prospectus supplements that are submitted for pre-clearance.

General disclosure matters

(a) Clear description of linked note

When the prospectus supplement or the base prospectus is offering linked notes, issuers should consider what information investors and their advisers would need to assess the nature of that security. Issuers may find that describing the linked notes in plain language, without being overly technical or relying on the use of complex jargon, will help a person trying to understand the nature of the security.

(b) Cover page disclosure

Given the unique characteristics of linked notes, issuers should consider whether investors and advisers would benefit from additional disclosure about the linked notes on the cover page of the prospectus supplement. Some examples of disclosure an issuer could consider are:

- explaining the linked note is a derivative product;
- informing readers that the linked note does not represent a direct investment in the underlying interest;
- describing whether an investor has any direct rights with respect to the underlying interest; and
- a summary of the key features of the investment including the underlying interest, the payout formula and the extent to which the investor's principal investment is at risk.

(c) Limits on investment returns

If a feature of a particular linked note is a limit on the return the issuer will pay to investors, we will generally conclude that the prospectus does not meet the full, true and plain disclosure requirement unless the shelf prospectus or prospectus supplement clearly explains that investors' returns will be capped at a certain amount and that they will not be able to participate in any returns on the underlying interest that exceed that maximum.

(d) Principal protection

In most linked note offerings some or all of the principal amount invested is at risk. In those cases where the issuer or another entity guarantees that an investor will receive some or all of the principal amount invested, we will generally conclude that the shelf prospectus and the prospectus supplement does not meet the full, true and plain disclosure requirement unless the issuer discloses that the principal protection depends on the creditworthiness of the issuer or guarantor. If principal protection only applies where the linked notes are held to maturity, this fact should also be disclosed in the prospectus supplement. The issuer should also disclose whether or not the linked notes qualify as a product covered by the Canada Deposit Insurance Corporation or any other similar product insurer.

(e) Past performance

Where the prospectus supplement contains past performance information for the underlying interest, the prospectus supplement should clearly state that past performance is not an indicator of future performance. Information provided should not include only the best periods for past performance while ignoring negative periods. This disclosure would be necessary to meet the full, true and plain disclosure requirement.

Issuers can refer to Item 4 of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* for further guidance on presentation of past performance information.

(f) Use of hypothetical calculation examples

Where an issuer uses hypothetical examples to illustrate how payouts for a linked note are calculated, the issuer should use reasonable and balanced assumptions and should disclose those assumptions. In particular, it may be misleading to emphasize potential gains while minimizing the risk of loss. It should also be clear that the hypothetical examples are not indicators of future results. This disclosure would generally be necessary to meet the full, true and plain disclosure requirement.

(g) Use of total return figures

If total return figures are used in the presentation of past performance data or assumptions for hypothetical calculation examples, the issuer should also refer to the equivalent compound annual returns in an equally prominent way in the prospectus supplement to meet the full, true and plain disclosure requirement.

(h) Benefit to issuer or affiliates of the issuer

For the purposes of the full, true and plain disclosure requirement, the issuer should clearly identify any benefits that will accrue to it or to any other parties that are involved in structuring or administering the linked note offering.

(i) Full explanation and transparency of fees and expenses

The full, true and plain disclosure requirement requires a clear and full explanation of fees that an investor will be paying. An issuer should clearly disclose any direct or indirect fees, expenses, costs or other charges that may be imposed on investors in linked notes. This would include any charges embedded in the formula used to determine payment at maturity, or in the offering price of the linked notes. For example, disclosure should be made of any fees or costs associated with enhanced participation rates, principal protection and any hedging activities undertaken by the issuer or any other party involved in product structuring on behalf of the issuer.

Issuers should consider what format the disclosure could take that would make the information easy to understand. For example, including all applicable fees, charges and expenses an investor would pay in a single table might be a useful format for this disclosure. This would allow investors to more easily determine the total cost of investing in a linked note without having to refer to various sections of the prospectus supplement.

(j) Conflicts of interest

We think that it is important for investors to understand where issuer and investor interests in a linked note might conflict. To meet the full, true and plain disclosure requirement, the prospectus supplement should disclose any actual or potential conflicts of interest that might arise from the different roles an issuer and its affiliates could have in connection with a linked note offering. Risk factor disclosure should also address these conflicts. Without this disclosure, investors may find it difficult to make an informed investment decision.

Investors may also find it helpful to understand how issuers will address situations where the issuer finds that its interests conflict with those of an investor. One way an issuer could do this is to disclose any policies or processes it has in place to deal with conflicts of interest or perceived conflicts identified by the issuer.

Some examples of conflicts we have seen, and how some issuers have resolved them, are:

1. Where an issuer or an affiliate of the issuer is also the calculation agent for the linked notes, the issuer provided disclosure to enable an investor to understand any risk that the calculation agent might not make decisions in the investor's favour.

2. A calculation, valuation or determination that the calculation agent must make for a linked note may require the calculation agent to apply material discretion or may not be based on information or calculation methodologies utilized by or derived from independent third party sources. In these situations, we have seen prospectus disclosure indicating that the calculation agent/issuer has a policy that would appoint an independent calculation expert to confirm its calculation, valuation or determination.

3. A conflict or perceived conflict may arise because an investor cannot easily verify payouts for certain linked notes. This might arise where the calculation formula the agent uses to determine payout amounts is complex, such as where the calculation depends not only on the final value of the underlying interest but also on the performance pattern of the underlying interest during the term of the note. Such complexities are compounded when the issuer or agent of the issuer has discretion to change the composition of the underlying interest. In situations like these, we have seen some issuers develop and disclose that they have an independent and objective review of the calculation process to deal with the potential conflict.

4. Some linked notes are linked to a portfolio or basket of underlying interests that may change from time to time in the discretion of the issuer or an investment manager retained by the issuer. This structure may generate additional conflicts. For these products, some issuers have appointed an independent committee made up of three independent members to oversee how the issuer handles the conflicts of interest. The issuers' prospectus disclosure has addressed how this type of body could assist the issuer to revolve the conflicts of interest it identified.

(k) Continuous disclosure

Because linked notes often constitute unsecured debt obligations of the issuer, an investor purchasing these notes would usually want to understand the credit quality of the issuer. As part of their investment decision, investors would also want to understand how they will be able to monitor changes in the underlying interest from which the linked note derives its value.

When considering the full, true and plain disclosure requirement, issuers should think about informing investors on how they can obtain on-going information about the issuer, the underlying interest and the performance of the linked notes.

(l) Risk disclosure

An issuer will generally find it difficult to meet the full, true and plain disclosure requirement without adequately disclosing the risks relating to the issuer and the particular linked note it is offering. The issuer should highlight any features of linked notes that differ from conventional debt securities, as well as the additional risks that may result from those differences. Risks for the investor will also usually be different than if the investor held the underlying interest directly. As a result, where an investor in a linked note does not have the same rights as it would if it held the underlying interest directly, we will generally consider that disclosing this information is necessary to meet the full, true and plain disclosure requirement.

(m) Suitability statement

Given the complexity of linked notes, it is important that issuers consider including a brief description of the suitability of a linked note for particular investors. This description may include the characteristics of investors for whom the linked note may or may not be a suitable investment.

(n) Secondary market and early redemption

If the linked note is redeemable, the full, true and plain disclosure requirement requires a description of how the redemption price is determined. In addition, where the issuer or a related entity intends to maintain a secondary market for its linked notes, the full, true and plain disclosure requirement would be satisfied by describing how bid-ask pricing is determined, as well as the limitations or conditions affecting the issuer's commitment to maintain a secondary market. Where principal protection is a feature of the linked note, it should be made clear, if it is the case, that investors will not benefit from this feature if they liquidate their investment prior to maturity.

(o) Underlying interest

In order to satisfy the full, true and plain disclosure requirement issuers must provide sufficient information regarding the underlying interest in order to allow investors to make an informed investment decision. As a result, issuers should consider whether the disclosure in the base prospectus or prospectus supplement would provide investors with sufficient information about the underlying interest so that an investor can fully understand the nature of its exposure under the linked note.

We have seen many linked note offerings use a market index or a basket of market indices as the underlying interest. Where this is the case, issuers may want to consider whether the indices on which they are basing the offering are "publicly available". We would generally consider a market index to be publicly available if there is market transparency of the index methodology, the constituents that make up the index, and the calculation of the index through information that is published and circulated to the public on a regular basis.

In some cases we believe that it would be difficult for an investor to readily access information about an underlying interest. In order to meet the full, true and plain disclosure requirement, issuers of linked notes tied to these underlying interests should pay special attention to whether adequate information about the underlying interest will be made available to investors. Areas where we think this could be particularly difficult are:

- proprietary indices established by the issuer or an affiliate of the issuer;
- hedge funds and hedge fund replication strategies; and
- any reference asset or interest for which there is no information in the public domain.

Specific disclosure for equity linked notes

Some linked notes (often called equity linked notes) provide a return based on the performance of an underlying security of a single underlying issuer or a static basket of underlying securities of one or more underlying issuer(s), where the issuer of the note and the underlying issuers (i.e. the issuers the note is linked to) are not the same. For the purposes of this Notice, equity linked notes do not include notes where the underlying issuer is an investment fund or the basket of underlying securities is a managed portfolio.

Investors in equity linked notes generally need specific information about the underlying issuer(s) to make informed investment decisions. This part of the Notice provides an issuer of equity linked notes with guidance on the disclosure it should consider including in its prospectus supplement to satisfy the full, true and plain disclosure requirement.

(a) Underlying issuer

An issuer of equity linked notes can meet the full, true and plain disclosure requirement in a number of different ways:

1. The issuer could include, or incorporate by reference, prospectus-level disclosure about an underlying issuer directly in its prospectus supplement.

2. The issuer could include "abbreviated disclosure" about an underlying issuer in its prospectus supplement if there is sufficient market interest and publicly available information about the underlying issuer. An issuer that chooses to include only abbreviated disclosure should consider whether that abbreviated disclosure satisfies the full, true and plain disclosure requirement. We will generally consider that the full, true and plain disclosure requirement is not met unless the disclosure includes, at a minimum:

    - a brief description of the name and business of each underlying issuer;
    - disclosure about the availability of information about each underlying issuer (on, for example, SEDAR); and
    - information concerning the market price of each underlying security (as, for example, quoted on the exchange on which the underlying security is listed).

    We will generally consider that there is sufficient market interest and publicly available information about an underlying issuer if the underlying issuer:

    - is a reporting issuer in at least one jurisdiction of Canada and has been a reporting issuer in a jurisdiction of Canada for at least 12 months;
    - is not on a list that identifies those reporting issuers that have been noted in default in a relevant jurisdiction in Canada, as described in CSA Notice 51-322 *Reporting Issuer Defaults*;
    - has filed a current AIF in at least one jurisdiction in which it is a reporting issuer;
    - has listed the underlying security on a short form eligible exchange (as defined in National Instrument 44-101 *Short Form Prospectus Distributions*);
    - is not an issuer whose operations have ceased or whose principal asset is cash, cash equivalents or its exchange listing;
    - is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and
    - has a market capitalization of at least Cdn$75 million.

3. The issuer could include other alternative disclosure provided the full, true and plain disclosure requirement is met.

(b) Direct or indirect financing benefit

To meet the full, true and plain disclosure requirement, the prospectus supplement should disclose whether each underlying issuer will receive a direct or indirect financing benefit from the distribution of the equity linked notes.

Whether an underlying issuer receives a direct or indirect financing benefit will depend on the facts and circumstances of a particular distribution. We may consider that an underlying issuer receives a financing benefit if the issuer of the equity linked notes has purchased securities of the same type as the underlying security directly from the underlying issuer within a proximate period of time to the distribution of the equity linked notes.

If an underlying issuer will receive a direct or indirect financing benefit, both the issuer of the equity linked note and the underlying issuer should refer to National Policy 41-201 *Income Trusts and Other Indirect Offerings* for further guidance.

(c) Physical delivery of underlying security

Certain equity linked notes may provide for the physical delivery of underlying securities at maturity. In this case, the prospectus supplement should disclose whether the underlying securities to be delivered will be subject to any resale restrictions under National Instrument 45-102 *Resale of Securities*. We understand that in most circumstances the underlying securities to be delivered will be freely tradeable.

Undertaking to pre-clear prospectus supplements

Due to our public interest concerns, before the securities regulators issue a final receipt for a base shelf prospectus that qualifies linked notes, issuers will be asked to file an undertaking to pre-clear prospectus supplements or templates for prospectus supplements pertaining to linked notes that the issuer has not previously distributed in a jurisdiction in Canada. These undertakings are in addition to the undertakings that are required under Part 4 of NI 44-102 for novel specified derivatives and asset backed securities.

The undertaking is not intended to capture "plain vanilla" debt securities where payment of the principal is guaranteed and the return is not linked to a derivative instrument. It is also not intended to capture derivatives of an issuer that are linked to the issuer's own securities, such as "plain vanilla" options and warrants.

A proposal to amend NI 44-102, which mirrors the broadened pre-clearance approach set out in this Notice, was published for comment on December 21, 2006. The comment period closed on March 31, 2007.

Issuer speed to market concerns

We recognize that issuers are concerned that the pre-clearance process could potentially affect their ability to take immediate advantage of perceived market opportunities. We have attempted to address this concern in the following three ways:

(a) Pre-clearance of templates of prospectus supplements

An issuer may submit for review a template of a prospectus supplement that it will use for future linked note offerings. To assist CSA staff in a review, the template should usually include most of the disclosure that the issuer would include in the prospectus supplement; however, the issuer may omit certain disclosure relating to information that the issuer would only know when the particular linked note distribution is identified. CSA staff would treat a pre-cleared template as supporting all subsequent offerings of linked notes by the issuer that are identical or substantially similar to the linked note described in the template.

(b) No pre-clearance of new tranches or series of previously issued linked notes

We will generally not ask an issuer to pre-clear a prospectus supplement that pertains to a new tranche or series of previously issued linked notes for which the issuer pre-cleared a prospectus supplement.

We will also generally not ask an issuer to pre-clear a prospectus supplement that pertains to a linked note that is not materially different from a previously issued linked note for which the issuer pre-cleared a prospectus supplement. We would not usually consider a change in the underlying interest to be a material difference unless it was a different type of underlying interest. For example, if the underlying interest is a publicly available market index, we do not think it is a material difference to use a different publicly available market index. Changing the underlying interest to a mutual fund or a notional reference portfolio, however, would likely result in the need for pre-clearance. We would also not consider a change to features such as the term to maturity or the level of principal protection to be material. We would usually consider introducing a new fee or a change to the payout mechanism to be a material difference.

(c) Shortened review time

The time period to provide initial comments on a prospectus supplement or a template of a prospectus supplement submitted for pre-clearance will be shortened from the 21 days set out in Part 4 of NI 44-102 to 10 working days. This shorter timeframe is consistent with the review period outlined in subsection 5.3(2) of National Policy 43-201 *Mutual Reliance Review System for Prospectuses* for complex offerings distributed under a short-form prospectus.

Pre-clearance process

The following is a summary of the process CSA staff will follow to pre-clear a prospectus supplement or template of a prospectus supplement:

- an issuer will file the prospectus supplement or template of a prospectus supplement and any other relevant material through SEDAR;

- the filing should be under the same SEDAR project number as the final base shelf prospectus;
- the filing subtype should be “prospectus supplement” and the document type should be “draft shelf prospectus supplement”;
- the filing should remain private;
- the filing should include a cover letter requesting pre-clearance of the prospectus supplement or template of a prospectus supplement;
- an issuer should identify, where possible, in the cover letter any previously issued linked notes of the issuer or other issuers that are similar to the linked notes being pre-cleared;
- the principal regulator will coordinate the receipt of comments from all jurisdictions where pre-clearance is sought;
- an initial comment letter will be issued through SEDAR within 10 working days of receiving the request for pre-clearance;
- the issuer should file its response to the initial comment letter through SEDAR;
- once all comments have been resolved, a letter confirming acceptance of the prospectus supplement will be issued through SEDAR; and
- a copy of the final version of the prospectus supplement or template of a prospectus supplement, which incorporates all changes required to address comments raised during the review, will be attached to the acceptance letter.

Once the issuer gets the acceptance letter, it may offer identical or substantially similar products based on that prospectus supplement or template of a prospectus supplement without the need for further pre-clearance. When filing the prospectus supplement for subsequent offerings based on the pre-cleared prospectus supplement or template of a prospectus supplement the issuer should:

- include a cover letter referring to the acceptance letter for the pre-cleared prospectus supplement or template of a prospectus supplement and setting out the basis for determining that pre-clearance of the current prospectus supplement is not required; and
- file a blacklined document showing a comparison of the current prospectus supplement against the pre-cleared prospectus supplement or template of a prospectus supplement.

Where an issuer is uncertain whether a prospectus supplement for a new offering would need to be pre-cleared, we would encourage the issuer to either treat the product as novel or to seek input from CSA staff prior to proceeding with the offering.

Future action

We will continue to monitor linked note offerings as both the nature of linked notes and the regulatory landscape evolve. We may provide additional guidance by updating this Notice or propose additional amendments to NI 44-102 or other instruments.

Questions and comments

Questions and comments may be referred to:

British Columbia

Noreen Bent
Manager and Senior Legal Counsel
604 899 6741
nbent@bcsc.bc.ca

Allan Lim
Manager
604 899 6780
alim@bcsc.bc.ca

Alberta

Cynthia Martens
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Jennifer Wong
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416 593 2393
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Québec

Patrick Théorêt
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514 395 0337, 4459
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Céline Morin
Analyst, Corporate Finance
514 395 0337, 4395
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July 20, 2007

1.1.3 Notice of Commission Approval – Amendments to Section 19.9 of MFDA By-law No. 1 – Hearing Panels

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

AMENDMENTS TO SECTION 19.9 OF MFDA BY-LAW NO. 1 REGARDING HEARING PANELS

NOTICE OF COMMISSION APPROVAL

On July 3, 2007 the Ontario Securities Commission approved the MFDA's proposal to amend Section 19.9 of MFDA By-law No. 1 regarding hearing panels. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved, and the British Columbia Securities Commission did not object to the MFDA's proposal. The MFDA's proposal allows a hearing panel to consist of two members if an industry representative is unable to continue serving on the hearing panel, provided that one of the remaining members is the appointed public representative.

The MFDA's proposal was published for comment on October 27, 2006 at (2006) 29 OSCB 8571. Some immaterial changes have been made to the MFDA's proposal since the time the time it was originally published. The MFDA has summarized the comments received on the proposal and provided responses. A copy of the summary and MFDA response together with a blacklined copy of the MFDA's proposal showing the changes from the previously published version, are being published in Chapter 13 of this Bulletin.

1.4 Notices from the Office of the Secretary

1.4.1 Momentas Corporation et al.

FOR IMMEDIATE RELEASE
July 16, 2007

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

AND

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

TORONTO – Following a hearing held on June 21, 2007, the Commission issued its Reasons and Decision on Sanctions and Costs in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs 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 416-595-8913
For investor inquiries:	OSC Contact Centre 416-593-8314 1-877-785-1555 (Toll Free)

1.4.2 Sulja Bros. Building Supplies, Ltd. (Nevada) et al.

FOR IMMEDIATE RELEASE
July 16, 2007

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

AND

IN THE MATTER OF
SULJA BROS. BUILDING SUPPLIES, LTD. (NEVADA),
SULJA BROS. BUILDING SUPPLIES LTD.,
KORE INTERNATIONAL MANAGEMENT INC.,
PETAR VUCICEVICH AND ANDREW DeVRIES

TORONTO – The Commission issued an Order that the Temporary Order of December 22, 2006 is continued until a date in August or September, 2007 to be scheduled by the Commission.

A copy of the Order dated July 3, 2007 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
416-595-8913

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

1.4.3 AiT Advanced Information Technologies Corporation et al.

FOR IMMEDIATE RELEASE
July 16, 2007

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

AND

IN THE MATTER OF
AiT ADVANCED INFORMATION TECHNOLOGIES CORPORATION, BERNARD JUDE ASHE AND DEBORAH WEINSTEIN

TORONTO – Following a hearing held on June 13, 2007, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision 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
416-595-8913

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

1.4.4 Al-Tar Energy Corp. et al.

FOR IMMEDIATE RELEASE
July 17, 2007

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

AND

IN THE MATTER OF

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

TORONTO – Following a hearing held today in the above noted matter, the Commission ordered that:

(1) pursuant to section 127(8) that the Temporary Order is extended to September 11, 2007; and

(2) the Hearing is adjourned to Tuesday, September 11, 2007 at 10 a.m.

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
416-595-8913

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

1.4.5 Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
July 17, 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 – The Commission made an Order today pursuant to subsection 127(7) of the Act in the above named matter which provides that:

(a) the Hearing is adjourned to September 4, 2007 at 2:30 p.m.; and

(b) the Temporary Order is extended until September 4, 2007.

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
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Monster Copper Corporation - 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., s. 1(10).

July 11, 2007

Mega Uranium Ltd.
130 King St. W., Suite 2500
Toronto, ON M5X 1A9

ATTN: Wendy Warhaft, General Counsel

Dear Sirs/Mesdames:

Re: Monster Copper Corporation (the "Applicant") - application for an order not to be a reporting issuer under the securities legislation of Alberta and Ontario (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,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 Vault Energy Inc. - MRRS Decision

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).

Citation: Vault Energy Inc., 2007 ABASC 448

July 9, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, ONTARIO,
QUEBEC AND NEW BRUNSWICK
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
VAULT ENERGY INC.
(THE FILER)

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Applicant, for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to be deemed to have ceased to be a reporting issuer in the Jurisdictions in accordance with the Legislation.

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

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

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

Interpretation

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

Representations

4. This decision is based on the factual information below as provided by the Filer:

   (a) The Filer is a corporation existing under the *Business Corporations Act* (Alberta).

   (b) The Filer's registered and principal office is located in Calgary, Alberta.

   (c) The Filer is a reporting issuer under the Legislation in each of the Jurisdictions.

   (d) Pursuant to an amalgamation dated June 22, 2005, Chamaelo Energy Inc. (**Chamaelo**) and Vault Acquisition Inc. (**VAI**) were amalgamated to form the Filer (the **Amalgamation**).

   (e) Prior to the Amalgamation, VAI was not a reporting issuer or the equivalent in any jurisdiction in Canada.

   (f) Prior to the Amalgamation, Chamaelo was a reporting issuer or the equivalent in the provinces of Alberta, British Columbia, Saskatchewan, Ontario, Québec and New Brunswick.

   (g) As a result of the Amalgamation, the only outstanding securities of the Filer consist of (i) common shares, all of which are owned by Vault Energy Trust (**VET**) and (ii) exchangeable shares which are exchangeable into trust units of VET (**Exchangeable Shares**). As part of the Amalgamation, holders of common shares of Chamaelo (**Chamaelo Shares**) exchanged one Chamaelo Share for, at their election where eligible, either half of one trust unit of VET (**Trust Unit**) or half of one Exchangeable Share.

   (h) All of the issued and outstanding securities of the Filer, including debt securities but excluding Exchangeable Shares are beneficially owned by VET.

   (i) All of the issued and outstanding Exchangeable Shares are beneficially owned by 29 security holders, of which 28 are resident in Alberta and one is resident in Saskatchewan.

   (j) Pursuant to a decision dated June 17, 2005 of the Alberta Securities Commission on behalf of the local securities regulatory authority or regulator in each of the Jurisdictions under the Legislation of the Jurisdictions, the Filer was exempt in the Jurisdictions from, among other things, the

requirements contained in National Instrument 51-102 – *Continuous Disclosure Obligations*.

(k) The Filer ceased to be a reporting issuer in British Columbia on April 23, 2007 under BC Instrument 11-502 - *Voluntary Surrender of Reporting Issuer Status*.

(l) VET is a reporting issuer in all of the provinces and territories of Canada. The Trust Units are listed on the Toronto Stock Exchange.

(m) No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 — *Marketplace Operation*.

(n) The Filer 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.

(o) The Filer is not in default of any of its obligations under the Legislation.

Decision

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

6. The decision of the Decision Makers under the Legislation is that the Filer is deemed to have ceased to be a reporting issuer under the Legislation.

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

2.1.3 Augen Capital Corp. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemptions granted to flow-through limited partnerships from the requirements in National Instrument 81-106 Investment Fund Continuous Disclosure to file an annual information form, to maintain and prepare an annual proxy voting record, to post the proxy voting record on its website, and to provide it to securityholders upon request-flow-through limited partnerships has a short lifespan and do not have a readily available secondary market- cost of complying with requirements far outweigh the benefits to investors.

Rules Cited

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2, 10.3, 10.4, 17.1.

May 28, 2007

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

AND

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

AND

IN THE MATTER OF
AUGEN CAPITAL CORP. ("AUGEN")
AUGEN LIMITED PARTNERSHIP 2006 ("ALP 2006")
AUGEN LIMITED PARTNERSHIP 2007 ("ALP 2007" AND TOGETHER WITH ALP 2006, THE "PARTNERSHIPS")
(TOGETHER, THE "FILERS")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and Québec (collectively, the "**Jurisdictions**"), has received an application from the Filers on behalf of the Partnerships and each limited partnership that is established from time to time in a similar manner (a "**Future Partnership**") by Augen, the investment consultant of the Partnerships, which is identical to the Partnerships in all respects which are material to this decision (the Future Partnerships together with the Partnerships, the "**Partnership Filers**")

for a decision under the securities legislation of the Jurisdictions (the "**Legislation**").

(a) from each of the Decision Makers in the Jurisdictions other than Québec granting exemptive relief to ALP 2006, and

(b) from the Decision Makers in all Jurisdictions granting exemptive relief to the Partnership Filers other than ALP 2006,

in each case, from:

(i) the requirement in section 9.2 of National Instrument 81-106 — *Investment Fund Continuous Disclosure* ("**NI 81-106**") to file an annual information form ("**AIF**");

(ii) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record ("**Proxy Voting Record**"); and

(iii) the requirements in section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on each Filer's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of such Filer (the "**Limited Partners**") upon request;

((i), (ii) and (iii) are collectively, the "**Requested Relief**").

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

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

(b) this MRRS decision document evidences the decision of each Decision Maker, as applicable to each Filer.

Interpretation

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

Representations

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

1. The principal offices of the Filers are located at 120 Adelaide Street West, Suite 905, Toronto, Ontario M5H 1T1.

2. The Partnerships were formed to invest 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 each Partnership and the relevant Resource Company. Under the terms of each Resource Agreement, each Partnership subscribed for Flow-Through Shares of the Resource Company and the Resource Company agreed to incur and renounce to such Partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development which qualify as Canadian exploration expenses or as Canadian development expenses which may be renounced as Canadian exploration expenses to such Partnership Filer.

3. Caldwell Investment Management Ltd. ("**Caldwell**") is the manager of the Partnerships. On behalf of the Partnerships, Caldwell selects Flow-Through Shares and other investments in accordance with the investment objectives of the Partnerships and manages the Partnerships' investment portfolio. Caldwell is registered under the *Securities Act* (Ontario) as an advisor in the categories of investment counsel and portfolio manager, and is also registered under the legislation of British Columbia, Alberta and Saskatchewan in the equivalent categories.

4. Augen, the investment consultant of the Partnerships, provides technical expertise, advice and due diligence services to assist the Partnerships and Caldwell with the review and selection of investment opportunities in respect of Resource Companies.

5. ALP 2006 is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the "**Act**") on January 25, 2006. On June 19, 2006, it became a reporting issuer in each of the Jurisdictions, other than Québec. On or about December 31, 2008, it will be dissolved and its Limited Partners will receive their *pro rata* share of its net assets.

6. ALP 2007 is a limited partnership formed pursuant to the Act on January 11, 2007. On March 21, 2007, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2009, it will be dissolved and its Limited Partners will receive their *pro rata* share of its net assets.

7. It is the current intention of the general partners of the Partnership Filers that each Partnership Filer will enter into an agreement and complete an exchange transaction (the "**Rollover Transaction**") with Augen Resource Strategy Fund Inc. (the "**Mutual Fund**"), an open-ended mutual fund corporation, pursuant to which such Partnership Filer will transfer its assets, on a tax-deferred basis, to the Mutual Fund. In exchange for such Filer's assets, the Mutual Fund will issue redeemable shares of the Mutual Fund to the Partnership Filer. Upon completion of the Rollover

Transaction, the Partnership Filer will be dissolved and the shares of the Mutual Fund will be distributed *pro rata* to the Limited Partners of such Partnership Filer.

8. The Partnership Filers are short-term special purpose vehicles which are dissolved within approximately 2 years of their respective formation. The primary investment purpose of the Partnership Filers 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 resource exploration and development expenditures to the Partnership Filers through the Flow-Through Shares.

9. The limited partnership units of the Partnership Filers (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. Generally, Units are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of such Partnership Filer in order to obtain the desired tax deduction.

10. Since their formation, each of the Partnerships' activities have been limited to (i) completing the issue of their Units under their respective prospectuses, (ii) investing their available funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses as described in their respective prospectuses.

11. The Limited Partners of the Partnership Filers will obtain adequate financial information from the Partnership Filers' annual and interim financial statements and management report of fund performance. If a material change takes place in the business and affairs of a Partnership Filer, such Partnership Filer will ensure that a timely material change report is filed with the securities regulatory authority or regulator in each of the Jurisdictions.

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

13. As a result of the implementation of NI 81-106, investors purchasing Units of the Partnership Filers were, and in the future will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership Filers voted (the "**Proxy Voting Policies**"), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.

14. The Proxy Voting Policies require that the Partnership Filers exercise their voting rights in respect of securities of Resource Companies in a manner consistent with the best interests of the Partnership Filers and their Limited Partners.

15. Given the short lifespan of the Partnership Filers, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which a Partnership Filer exercised or failed to exercise its proxy voting rights, as such Partnership Filer would likely be dissolved by the time any potential change could materialize.

16. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnership Filers.

Decision

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

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

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

2.1.4 Execution, LLC - ss. 6.1(1) of MI 31-102 National Registration Database and s. 6.1 of OSC Rule 13-502 Fees

Headnote

Applicant seeking registration as an international adviser is exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees is waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

Multilateral Instrument 31-102 National Registration Database (2003) 26 OSCB 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 OSCB 867, ss. 4.1, 6.1.

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

AND

IN THE MATTER OF
EXECUTION, LLC

DECISION
(Subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and Section 6.1 of Ontario Securities Commission Rule 13-502 Fees)

UPON the Director having received the application of Execution, LLC (**the Applicant**) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (**MI 31-102**) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**) in respect of this discretionary relief;

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

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is a limited liability company organized in the State of Connecticut. The head office of the Applicant is in Greenwich, Connecticut. The Applicant is not presently registered in any capacity with the Commission.

2. The Applicant is registered with the United States Securities and Exchange Commission as a fully registered broker-dealer in the United States.

3. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (the electronic funds transfer requirement or EFT Requirement).

4. The Applicant anticipates encountering difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

5. The Applicant confirms that it is not registered, and does not presently intend to register in another category in Ontario to which the EFT Requirement applies.

6. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

7. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees and makes such payment within ten (10) business days of the date of the NRD filing or payment due date;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any other Canadian jurisdiction in another category to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

July 12, 2007

"Marsha Gerhart"
Assistant Manager, Legal
Registrant Regulation

2.1.5 Goodman & Company, Investment Counsel Ltd. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemption from subsection 4.1(1) of National Instrument 81-102 Mutual Funds to allow dealer managed mutual fund to invest in securities of an issuer during the prohibition period – affiliate of the dealer manager acted as an underwriter in connection with the distribution of securities of the issuer.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(1), 19.1.

July 5, 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,
THE NORTHWEST TERRITORIES, NUNAVUT
AND THE YUKON
(the Jurisdictions)

AND

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

AND

GOODMAN & COMPANY, INVESTMENT COUNSEL LTD.
(the Applicant or Dealer Manager)

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 Applicant, the manager and portfolio adviser of the Dynamic Focus+ Resource Fund (the **Fund** or **Dealer Managed Fund**), for a decision under section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) for:

- an exemption from subsection 4.1(1) of NI 81-102 (the **Investment Restriction**) to enable the Dealer Managed Fund to invest in the Securities (as defined below) of Orleans Energy Ltd. (the **Issuer**) during the distribution of the Securities (the **Distribution**) and the 60-day period (the **60-Day Period**) following completion of the Distribution (the Distribution and the 60-Day Period together, the **Prohibition Period**), all in connection with the offering (the **Offering**) of common shares (the **Common Shares**) and common shares to be

issued on a flow-through basis (the **Flow Through Shares** and together with the Common Shares, the **Securities**) of the Issuer under a short form prospectus to be filed with the securities regulatory authorities in all of the provinces in Canada, except Québec, as described in a Term Sheet dated June 11, 2007 (the **Term Sheet**).

Under the MRRS for Exemptive Relief Applications:

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

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

It is the responsibility of each of the Decision Makers to make a global assessment of the risks involved in granting exemptive relief from the Investment Restriction in relation to the specific facts of each application.

Interpretation

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

Representations

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

1. The Dealer Manager is a dealer manager with respect to the Dealer Managed Fund, and the Dealer Managed Fund is a dealer managed fund, as such terms are defined in section 1.1 of NI 81-102.

2. The head office of the Dealer Manager is in Toronto, Ontario.

3. The securities of the Dealer Managed Fund are qualified for distribution in all of the provinces and territories of Canada pursuant to a simplified prospectus that has been prepared and filed in accordance with the applicable securities legislation.

4. The Issuer is a Calgary, Alberta based crude oil and natural gas company involved in the acquisition, exploration and development of crude oil and natural gas assets within the province of Alberta, Canada.

5. According to the Term Sheet, the Offering is expected to be of 2,800,000 Common Shares priced at $4.30 per Common Share and 1,500,000 Flow Through Shares priced at $5.45 per Flow Through Share, with the gross proceeds of the Offering expected to be $20,215,000 representing $12,040,000 from the offering of Common Shares and $8,175,000 from the offering of Flow Through Shares. In addition, the Issuer will grant the Underwriters an over-allotment option (the **Over Allotment Option**) to purchase from treasury up to an additonal 420,000 Common Shares (equal to 15% of the number of Common Shares sold pursuant to the Offering) at the offering price for Common Shares. The Over Allotment is exercisable by the Underwriters for a period of 30 days form the Closing Date for addional gross proceeds of $1,806,000.

6. According to the Term Sheet, the Issuer will use the net proceeds of the Offering to fund the Issuer's recent acquisiton of additional land holdings at Kaybob in West Central Alberta and on an expanded drilling program at the Kaybob site. The proceeds for the sale of the Flow Through Shares will be used by the Issuer to incur eligible Canadian Exploration Expenses (or Canadian Development Expenses which can be renounced as Canadian Exploration Expenses) which will be renounced in favour of the purchasers of such Securities effective for the 2007 taxation year.

7. The common shares of the Issuer are currently listed for trading on the TSX Venture Exchange (**TSXV**) under the symbol "OEX" and the Dealer Manager understands that the Issuer will apply to the TSXV to have the Common Shares and Flow Through Shares issued in connection with the Offering listed on the TSXV. The listing of the Common Shares and Flow Through Shares will be conditional upon the Issuer fulfilling all listing requirements and conditions of the TSXV.

8. The Offering is being underwritten, subject to certain terms, by a syndicate which is expected to include Dundee Securities Corporation (the **Related Underwriter**), an affiliate of the Dealer Manager, among others (the Related Underwriter and any other underwriters, which are now or may become part of the syndicate prior to closing, the **Underwriters**).

9. The Term Sheet does not disclose that the Issuer is a related issuer or connected issuer as defined in National Instrument 33-105 – *Underwriting Conflicts* (**NI 33-105**), of the Related Underwriter.

10. Despite the affiliation between the Dealer Manager and the Related Underwriter, they operate independently of each other. In particular, the investment banking and related dealer activities of the Related Underwriter and the investment portfolio management activities of the Dealer Manager are separated by ethical walls. Accordingly, no information flows from one to the other concerning their respective business operations or activities generally, except in the following or similar circumstances:

    (a) in respect of compliance matters (for example, the Dealer Manager and the

Related Underwriter may communicate to enable the Dealer Manager to maintain an up to date restricted-issuer list to ensure that the Dealer Manager complies with applicable securities laws); and

(b) the Dealer Manager and the Related Underwriter may share general market information such as discussion on general economic conditions, bank rates, etc.

11. The Dealer Managed Fund is not required or obligated to purchase any Securities during the Prohibition Period.

12. The Dealer Manager may cause the Dealer Managed Fund to invest in Securities during the Prohibition Period. Any purchase of Securities will be consistent with the investment objectives of the Dealer Managed Fund and represent the business judgment of the Dealer Manager uninfluenced by considerations other than the best interests of the Dealer Managed Fund or in fact be in the best interests of the Dealer Managed Fund.

13. To the extent that the same portfolio manager or team of portfolio managers of the Dealer Manager manages the Dealer Managed Fund and other client accounts that are managed on a discretionary basis (the **Managed Accounts**), the Securities purchased for them will be allocated:

(a) in accordance with the allocation factors or criteria stated in the written policies or procedures put in place by the Dealer Manager for the Dealer Managed Fund and Managed Accounts, and

(b) taking into account the amount of cash available to each Dealer Managed Fund for investment.

14. Except as described above, the Dealer Manager has not been involved in the work of the Related Underwriter and the Related Underwriter has not been and will not be involved in the decisions of the Dealer Manager as to whether the Dealer Managed Fund will purchase Securities during the Prohibition Period.

15. There will be an independent committee (the **Independent Committee**) appointed in respect of the Dealer Managed Fund to review the Dealer Managed Fund's investments in Securities during the Prohibition Period.

16. The Independent Committee will have at least three members and every member must be independent. A member of the Independent Committee is not independent if the member has a direct or indirect material relationship with its Dealer Manager, the Dealer Managed Fund, or any affiliate or associate thereof. For the purpose of this Decision, a material relationship means a relationship which could, in the view of a reasonable person, reasonably interfere with the exercise of the member's independent judgment regarding conflicts of interest facing the Dealer Manager.

17. The members of the Independent Committee will exercise their powers and discharge their duties honestly, in good faith, and in the best interests of investors in the Dealer Managed Fund and, in so doing, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

18. The Dealer Manager, in respect of the Dealer Managed Fund, will notify a member of staff in the Investment Funds Branch of the Ontario Securities Commission, in writing of the filing of the SEDAR Report (as defined below) on SEDAR, as soon as practicable after the filing of such report, and the notice shall include the SEDAR project number of the SEDAR Report and the date on which it was filed.

Decision

Each of the Decision Makers has assessed the conflict of interest risks associated with granting an exemption in this instance from the Investment Restriction and is satisfied that, at the time this Decision is granted, the potential risks are sufficiently mitigated.

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

The Decision of the Decision Makers is that the Requested Relief is granted, notwithstanding that the Related Underwriter acts or has acted as underwriter in the Offering provided the following conditions are satisfied:

I. At the time of each purchase of Securities (the **Purchase**) by a Dealer Managed Fund pursuant to this Decision, the following conditions are satisfied:

(a) the Purchase

(i) represents the business judgment of the Dealer Manager uninfluenced by considerations other than the best interests of the Dealer Managed Fund, or

(ii) is, in fact, in the best interests of the Dealer Managed Fund;

(b) the Purchase is consistent with, or is necessary to meet, the investment

objective of the Dealer Managed Fund as disclosed in its simplified prospectus; and

(c) the Dealer Managed Fund does not place the order to purchase, on a principal or agency basis, with the Related Underwriter.

II. Prior to effecting any Purchase pursuant to this Decision, the Dealer Managed Fund has in place written policies or procedures to ensure that,

(a) there is compliance with the conditions of this Decision; and

(b) in connection with any Purchase,

(i) there are stated factors or criteria for allocating the Securities purchased for the Dealer Managed Fund and other Managed Accounts, and

(ii) there is full documentation of the reasons for any allocation to a Dealer Managed Fund or Managed Account that departs from the stated allocation factors or criteria.

III. The Dealer Manager does not accept solicitation by its Related Underwriter for the Purchase of Securities for the Dealer Managed Fund.

IV. The Related Underwriter does not purchase Securities in the Offering for its own account except Securities that are sold by the Related Underwriter on Closing.

V. The Dealer Managed Fund has an Independent Committee to review the Dealer Managed Fund's investments in Securities during the Prohibition Period.

VI. The Independent Committee has a written mandate describing its duties and standard of care which, as a minimum, sets out the conditions of this Decision.

VII. The members of the Independent Committee exercise their powers and discharge their duties honestly, in good faith, and in the best interests of investors in the Dealer Managed Fund and, in so doing, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

VIII. The Dealer Managed Fund does not relieve the members of the Independent Committee from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph VII above.

IX. The Dealer Managed Fund does not incur the cost of any portion of liability insurance that insures a member of the Independent Committee for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph VII above.

X. The cost of any indemnification or insurance coverage paid for by the Dealer Manager, any portfolio manager of the Dealer Managed Fund, or any associate or affiliate of the Dealer Manager or any portfolio manager of the Dealer Managed Fund to indemnify or insure the members of the Independent Committee in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph VII above is not paid either directly or indirectly by the Dealer Managed Fund.

XI. The Dealer Manager files a certified report on SEDAR (the **SEDAR Report**) no later than 30 days after the end of the Prohibition Period, that contains a certification by the Dealer Manager that contains:

(a) the following particulars of each Purchase:

(i) the number of Securities purchased by the Dealer Managed Fund;

(ii) the date of the Purchase and purchase price;

(iii) whether it is known whether any Underwriter or syndicate member has engaged in market stabilization activities in respect of the Securities;

(iv) if Securities were purchased for the Dealer Managed Fund and other Managed Accounts of the Dealer Manager, the aggregate amount so purchased and the percentage of such aggregate amount that was allocated to the Dealer Managed Fund; and

(v) the dealer from whom the Dealer Managed Fund purchased the Securities and the fees or commissions, if any, paid by the Dealer Managed Fund in respect of such Purchase;

(b) a certification by the Dealer Manager that the Purchase:

(i) was made free from any influence by the Related

Underwriter or any affiliate or associate thereof and without taking into account any consideration relevant to the Related Underwriter or any associate or affiliate thereof; and

(ii) represented the business judgment of the Dealer Manager uninfluenced by considerations other than the best interest of the Dealer Managed Fund, or

(iii) was, in fact, in the best interests of the Dealer Managed Fund;

(c) confirmation of the existence of the Independent Committee to review the Purchase of the Securities by the Dealer Managed Fund, the names of the members of the Independent Committee, the fact that they meet the independence requirements set forth in this Decision, and whether and how they were compensated for their review;

(d) a certification by each member of the Independent Committee that after reasonable inquiry the member formed the opinion that the policies and procedures referred to in Condition II(a) above are adequate and effective to ensure compliance with this Decision and that the decision made on behalf of the Dealer Managed Fund by the Dealer Manager to purchase Securities for the Dealer Managed Fund and each Purchase by the Dealer Managed Fund:

(i) was made in compliance with the conditions of this Decision;

(ii) was made by the Dealer Manager free from any influence by the Related Underwriter or any affiliate or associate thereof and without taking into account any consideration relevant to the Related Underwriter or any associate or affiliate thereof; and

(iii) represented the business judgment of the Dealer Manager uninfluenced by considerations other than the best interests of the Dealer Managed Fund, or

(iv) was, in fact, in the best interests of the Dealer Managed Fund.

XII. The Independent Committee advises the Decision Makers in writing of:

(a) any determination by it that the condition set out in paragraph XI(d) has not been satisfied with respect to any Purchase of the Securities by the Dealer Managed Fund;

(b) any determination by it that any other condition of this Decision has not been satisfied;

(c) any action it has taken or proposes to take following the determinations referred to above; and

(d) any action taken, or proposed to be taken, by the Dealer Manager or a portfolio manager of the Dealer Managed Fund, in response to the determinations referred to above.

XIII. For Purchases of Securities during the Distribution only, the Dealer Manager:

(a) expresses an interest to purchase on behalf of the Dealer Managed Fund and Managed Accounts a fixed number of Securities (the Fixed Number) to an Underwriter other than its Related Underwriter;

(b) agrees to purchase the Fixed Number or such lesser amount as has been allocated to the Dealer Manager no more than five (5) business days after the closing of the Offering;

(c) does not place an order with an Underwriter of the Offering to purchase an additional number of Securities under the Offering prior to the completion of the Distribution, provided that if the Dealer Manager was allocated less than the Fixed Number at the time of the closing of the Offering for the purposes of the closing of the Offering, the Dealer Manager may place an additional order for such number of additional Securities equal to the difference between the Fixed Number and the number of Securities allotted to the Dealer Manager, in the event that the Over Allotment Option is exercised at the time of the closing of the Offering; and

(d) does not sell Securities purchased by the Dealer Manager under the Offering, prior to the listing of the Securities issued in the Offering on the TSXV.

XIV. Each Purchase of Securities during the 60-Day Period is made on the TSXV.

XV. For Purchases of Securities during the 60-Day Period only, an Underwriter provides to the Dealer Manager written confirmation that the dealer restricted period in respect of the Offering, as defined in OSC Rule 48-501 - Trading During Distributions, Formal Bids and Share Exchange Transactions, has ended.

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

2.1.6 Amtelecom Income Fund - 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 6, 2007

Stewart McKelvey
Suite 900
Purdy's Wharf Tower One
1959 Upper Water Street
Halifax, NS
B3J 3N2

Attention: Melisa C. Marsman

Re: Amtelecom Income Fund (the "Applicant") – application for an order not to be a reporting issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, 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 not to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

2.1.7 Workbrain Corporation - 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 6, 2007

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3Y4

Dear Mr. Powers:

Re: Workbrain Corporation (the "Applicant") — application for an order not to be a reporting issuer under the securities legislation of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Québec 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,

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 not 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 not a reporting issuer.

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

2.1.8 Front Street Resource Performance Fund Ltd. - 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 shares of the investment fund are expected to be listed on the TSX which will provide liquidity for investors – National Instrument 81-106 Investment Fund Continuous Disclosure.

Applicable Ontario Statutory Provisions

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

July 9, 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
FRONT STREET RESOURCE PERFORMANCE FUND 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**) 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 (the **System**):

(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 mutual fund corporation established under the laws of Ontario. The Filer's manager is Front Street Capital 2004 (the **Manager**), and its portfolio advisor is Front Street Investment Management Inc. The Filer's head office is located in Ontario.

2. The Filer will make an offering (the **Offering**) to the public, on a best efforts basis, of transferable units of the Filer, each unit consisting of an equity share (the **Equity Shares**) and one warrant to purchase such shares (the **Warrants**). Each Warrant entitles the holder to purchase one Equity Share at a price of $11.00 on November 9, 2009. Any Warrants not exercised by such date will be void and of no value. The Filer does not intend to continuously offer units once the Filer is out of primary distribution.

3. A preliminary prospectus dated May 30, 2007 (the **Preliminary Prospectus**) has been filed with the securities regulatory authorities in each of the provinces of Canada under SEDAR Project No. 1112858.

4. The Equity Shares and the Warrants 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.

5. The Filer's investment objective is to maximize capital appreciation by investing on a long/short basis in small and medium-sized business entities in a range of natural resource sector industries, including base and precious metal mining and exploration, and in energy-related industries. The Filer will invest the net proceeds of the Offering in a portfolio consisting primarily of equity and equity-related securities. The Filer's investment strategies will involve the use of specified derivatives.

6. The Equity Shares may be surrendered for redemption at any time and will be redeemed on a monthly basis on the 15th day of each month or, if the 15th day is not a business day, the immediately preceding business day (each a **Monthly Redemption Date**). The Filer will make payment for any shares retracted within 10 business days of such date.

7. The monthly redemption price for the Equity Shares is the lower of: (i) 95% of the "market price" (as defined in the Preliminary Prospectus) of the Equity Shares on the principal market on which the Equity Shares are quoted for trading during the 20 trading day period ending immediately before the redemption date; and (ii) 100% of the "closing market price" on the principal market on which the Equity Shares are quoted for trading on the Redemption Date.

8. On the Monthly Redemption Date in October of each year commencing October 2008, Equity Shares can be surrendered for redemption for a redemption price equal to the net asset value per Equity Share (calculated as described in paragraph 11 below), less any redemption charges and applicable costs (as described in the Preliminary Prospectus). In order to exercise the annual redemption right in 2008 and 2009, a shareholder must concurrently surrender for redemption one Warrant for each Equity Share surrendered for redemption.

9. 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 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 on a daily basis.

10. The Filer will calculate its net asset value on (a) the Thursday of each week of each fiscal year or, if Thursday is not a business day, the immediately preceding business day, (b) the last business day of each month, (c) each Monthly Redemption Date, if not otherwise a valuation date, and (d) such other day or days as the Manager shall determine from time to time (each a **NAV Valuation Date**).

11. The net asset value per Equity Share on a NAV Valuation Date will be calculated by dividing the net asset value of the Filer on such NAV Valuation Date (the **numerator**) by the total number of Equity Shares issued and outstanding on such NAV Valuation Date (the **denominator**). In addition, if the net asset value per Equity Share is greater than $11.00 (the exercise price of the Warrants), then a diluted net asset value per Equity Share will also be calculated. The diluted net asset value per Equity Share will be calculated by (i) adding to the denominator the total number of Warrants then outstanding; and (ii) by adding to the numerator the product of such number of

Warrants and $11.00. The resulting quotient of (i) and (ii) will be the diluted net asset value per Equity Share.

12. The Preliminary Prospectus discloses and the final prospectus will disclose that the net asset value per Equity Share and the diluted net asset value per Equity Share (when applicable) will be made available to the public on the Manager's website at www.frontstreetcapital.com. The Manager's website will also contain an explanation of the difference between the net asset value per Equity Share and the diluted net asset value per Equity Share.

13. Shareholders will have the opportunity to trade their Equity Shares on the TSX and as such do not have to rely on the redemption features to provide liquidity for their 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 the Requested Relief is granted for so long as:

(a) the Equity Shares are listed on the TSX; and

(b) the Filer calculates its net asset value per Equity Share at least once a week.

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

2.1.9 Pentecostal Financial Services Group Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the prospectus and registration requirements granted to an issuer that is subsidiary of a registered charity – both the issuer and its parent are organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational operations and not for profit – the relief is subject to conditions equivalent to section 2.38 of National Instrument 45-106 Prospectus and Registration Exemptions, with the exception that the net earnings of the issuer may benefit its parent.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions, s. 2.38.

June 7, 2007

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

AND

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

AND

IN THE MATTER OF
PENTECOSTAL FINANCIAL SERVICES GROUP INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") for:

- an exemption from the dealer registration requirement in respect of trades in fixed income securities issued in connection with the Program (defined below) of capital loans for charitable purposes (the "Notes"); and

- an exemption from the prospectus requirement in respect of the distribution of Notes

(collectively the "Requested Relief").

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

(a) the Ontario Securities Commission was selected as the principal regulator for this application, and

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

Interpretation

Defined terms contained in 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 Pentecostal Assemblies of Canada (the "PAOC") is a registered charity incorporated under Part II of the *Canada Corporations Act* and is a "charitable organization" for purposes of the *Income Tax Act* (Canada). The PAOC carries on its religious and charitable activities in various provinces in Canada but maintains its head office in Ontario. Member congregations of the PAOC are located in each of the Jurisdictions.

2. The Filer is a corporation incorporated under the laws of Canada on March 29, 2005, and is wholly-owned by the PAOC.

3. The Filer is restricted in the business it may carry on and on the powers it may exercise to engaging exclusively in educational, charitable or religious activities.

4. The principal part of such activities will consist of the issuance and distribution of Notes in respect of a program (the "Program") under which individuals associated with PAOC congregations and certain pension or other trusts for which the PAOC is the trustee make capital loans to those congregations for chartable purposes, such as the building or repairing of churches, that are secured by first mortgages.

5. The Filer would be entitled to rely on the exemption provided by section 2.38 of National Instrument 45-106 *Prospectus and Registration Exemptions* in connection with its participation in the Program, but for the application of paragraph (a) thereof, which provides that such exemption is unavailable if any part of the net profits of the Filer accrue to the benefit of any security holder of the Filer.

6. It is contemplated that the Filer may have net profits which will be paid exclusively to the PAOC, which as a registered charity would itself be using such net profits exclusively in furtherance of its own educational, charitable or religious activities.

7. The Filer will deliver an information statement in the form of BC Form 32-901F to each purchaser before the purchaser agrees to purchase the Notes. The information statement will reflect that it is the Filer, not the PAOC, that is issuing the Notes, provide disclosure about both the Filer and the PAOC and provide disclosure about the risk of the individuals no receiving a fixed rate of return on the Notes.

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:

(c) at the time of the trade:

(i) the Filer is organized exclusively for educational, benevolent, fraternal, charitable religious or recreational purposes and not for profit;

(ii) the PAOC is organized exclusively for educational, benevolent, fraternal, charitable religious or recreational purposes and not for profit;

(iii) the Filer is wholly-owned by the PAOC;

(iv) all net earnings of the Filer are paid to the benefit of the PAOC;

(v) no commission or other remuneration was or will be paid in connection with the sale of the Notes;

(vi) the Filer has delivered a copy of this decision to the purchaser of Notes and to the PAOC; and

(vii) in connection with any trade in British Columbia, the Filer delivered an information statement in the form of BC Form 32-901F to each purchaser before the purchaser agreed in writing to purchase the Notes; and

(d) the Requested Relief will expire on the date that is ten years after the date of this decision.

"Harold P. Hands"
Commissioner
Ontario Securities Commission

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

2.1.10 Children's Educational Foundation of Canada on behalf of The Children's Education Trust of Canada - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Exemptive relief granted to scholarship plan allowing extension of prospectus lapse date and relief to not include interim financial statements in the renewal prospectus due to the unique fact situation that gave rise to the application.

Applicable Statutory Provisions

Securities Act, R.S.O 1990, c.,S.5, as am., s. 62(5).
OSC Rule 41-502, ss. 5.2(b), 11.1.

July 10, 2007

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

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS ("MRRS")**

AND

**IN THE MATTER OF
THE CHILDREN'S EDUCATIONAL FOUNDATION OF
CANADA (THE "FILER") ON BEHALF OF THE
CHILDREN'S
EDUCATION TRUST OF CANADA ("CETC")**

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:

(i) the time limits for the renewal of the long form prospectus of the Filer dated June 30, 2006 (the "Current Prospectus") be extended to the time limits that would be applicable if the lapse date of the Current Prospectus was August 31, 2007 (the "New Lapse Date"); and

(ii) the renewal prospectus for CETC filed within the extended time limits applicable under the New Lapse Date not be required to include the interim

financial statements of the Filer for the period ended June 30, 2007 (the "Interim Statements").

Paragraphs (i) and (ii) together shall be referred to as the Requested Relief.

Under the MRRS,

(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 was incorporated under the laws of Canada by articles of incorporation dated March 23, 1990.

2. The Filer is a reporting issuer in each of the provinces and territories in Canada and is not in default of any of the requirements of the securities legislation applicable therein.

Lapse Date Relief

3. The Filer filed the Current Prospectus in connection with the continuous distribution of securities of CETC.

4. The lapse date for the Current Prospectus is June 30, 2007 (the "Lapse Date").

5. The Filer filed a *pro forma* prospectus on May 31, 2007 (the "*Pro Forma* Prospectus") in connection with the continuous public offering of the securities of CETC to the public beyond the Lapse Date.

6. Pursuant to the Legislation, a final prospectus (the "Prospectus") must be filed by July 10, 2007 (the "Filing Date"), and an MRRS decision document evidencing receipt obtained by July 20, 2007.

7. In connection with the review of the *Pro Forma* Prospectus, Staff of the OSC ("Staff") have to date issued one comment letter dated June 13, 2007, to which the Filer responded on June 27, 2007.

8. In a letter dated June 19, 2007 (the "Second Letter"), Staff have indicated that further comments related to broad industry wide issues are likely to be forthcoming and that, in light of timing concerns, an extension of the Lapse Date would be appropriate.

9. In the Second Letter, Staff have advised that an extension of the Lapse Date would provide additional time in order to resolve the outstanding issues while ensuring that the continuous public offering remains in distribution.

10. If the relief requested is not granted, the Filer will no longer be qualified to distribute securities in the Jurisdictions pursuant to the Current Prospectus after June 30, 2007.

Prospectus Relief – Interim Financial Statements

11. Pursuant to section 2.4 of National Instrument 81-106 – *Investment Fund Continuous Disclosure*, the Foundation is required to file the Interim Statements on or before August 29, 2007. If the Interim Statements are filed before the Prospectus is filed, the Interim Statements will be required to be included in the Prospectus.

12. In contrast, the Interim Statements would not be required to be included in the Prospectus if the Prospectus were filed by the Filing Date.

Additional Submissions

13. In addition, in the Second Letter, Staff have advised that they would be willing to recommend that the application fee in Ontario for an extension of the Lapse Date be waived.

DECISION

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provide the Decision Maker with the jurisdiction to make the decision have been met.

The decision of the Decision Makers under the Legislation is that:

A. the time periods provided by the Legislation as they apply to a distribution of securities under the Current Prospectus are hereby extended to the time periods that would be applicable if the lapse date of the Current Prospectus was August 31, 2007; and

B. the Filer is exempt from the requirements in the Legislation to include the Interim Statements in the Prospectus, filed within the time limits permitted by this Decision under the New Lapse Date, in the event the Interim Statements are filed in advance of the date on which the Prospectus is filed.

"Susan Silma"
Director, Investment Funds Branch
Ontario Securities Commission

2.1.11 United Grain Growers Limited, carrying on business as Agricore United - 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., s. 1(10).

Torys LLP
Suite 3000
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario
M5K 1N2

Attention: Jackie Taitz

Dear Sirs/Mesdames:

Re: United Grain Growers Limited, carrying on business as Agricore United (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Manitoba, Ontario, Québec, Saskatchewan, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

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

As the applicant has represented to the Decision Makers that:

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 - *Marketplace Operation*;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

DATED this 11th day of July, 2007 in the City of Winnipeg, in the Province of Manitoba.

"Chris Besko"
Legal Counsel, Deputy Director
Manitoba Securities Commission

2.1.12 Qtrade Asset Management Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from the requirements of section 11.1(1)(b) and section 11.2(1)(b) of NI 81-102 to permit commingling of cash received for the purchase or redemption of mutual fund securities with cash received for the purchase and sale of other securities or instruments the participating dealer of third party funds and potential principal distributor of mutual funds is permitted to sell, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 11.1(1)(b), 11.2(1)(b), 19.1.

July 13, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,
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
QTRADE ASSET MANAGEMENT INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

1 The local securities regulatory authority or regulator (the Decision Maker) in each of the jurisdictions has received an application from the Filer for a decision (the Requested Relief) under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the provisions of section 11.1(1)(b) and section 11.2(1)(b) of National instrument 81-102 *Mutual Funds* (N1 81-102) that prohibit a principal distributor or participating mutual fund dealers and other service providers from commingling cash received for the purchase or redemption of mutual fund securities (MF Cash) with cash received for the purchase or sale of guaranteed investment certificates or other securities or instruments the Filer is permitted to trade or sell (Other Cash) (the Commingling Prohibition).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the British Columbia Securities Commission is the principal regulator for this application,

and

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

Interpretation

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

Representations

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

1. the Filer, a wholly-owned subsidiary of Qtrade Canada Inc., is a corporation incorporated under the *Canada Business Corporations Act*, and is registered as a mutual fund dealer in all provinces (other than Québec and Prince Edward Island) of Canada where such registration is required for the purpose of trading mutual fund securities. The Filer is a member of the Mutual Fund Dealers Association of Canada (MFDA);

2. the Filer may become a principal distributor and is a participating dealer of various third-party mutual fund securities within the meaning of NI 81-102; in addition to mutual fund securities, the Filer distributes third-party segregated funds issued by various third party segregated funds issuers and other securities or instruments that the Filer is permitted to trade or sell, including guaranteed investment certificates (GICs);

3. the Filer proposes to pool Other Cash with MF Cash in a trust settlement account established under section 11.3 of NI 81-102 (the Trust Account); the commingling of Other Cash with MF Cash would facilitate significant administrative and systems economies that will enable the Filer to enhance its level of service to its client accounts at less cost to the Filer; the Trust Account is designated as a trust account by the financial institution at which it is held, and is held in the name of the Filer;

4. the Commingling Prohibition prevents the Filer from commingling the MF Cash with Other Cash;

5. prior to June 23, 2006, section 3.3.2(e) of the Rules of the MFDA (the MFDA Rules) also prohibited the commingling of Other Cash with MF Cash; on June 23, 2006, the MFDA granted relief from the Commingling Prohibition in section 3.3.2(e) of the MFDA Rules to the Filer subject to the Filer obtaining similar relief from the Commingling Prohibition from the Decision Makers; should the Requested Relief be granted, the Filer will provide the MFDA with notice that the requested relief has been granted;

6. the Filer will maintain proper records with respect to client cash in a commingled account, and will ensure that the Trust Account is reconciled in accordance with MFDA Rules, and the MF Cash and Other Cash are properly accounted for daily;

7. the Filer currently has systems in place to be able to account for all of the monies it receives into and all of the monies that are to be paid out of the Trust Account in order to meet the requirements of sections 11.1 and 11.2 of NI 81-102;

8. MF Cash or Other Cash related to a transaction initiated by one of the Filer's clients will not be used to settle a transaction initiated by any other client of the Filer; the Filer settles through FundSERV, at the end of each trading day, MF Cash payable from the Trust Account to a mutual fund with MF Cash payable by the mutual fund to the Trust Account;

9. except for the Commingling Prohibition, the Filer will comply with all other requirements prescribed in Part 11 of NI 81-102 with respect to the handling and segregation of client cash;

10. as a member of the MFDA, the Filer is subject to the Rules of the MFDA on an ongoing basis, particularly those which set out requirements with respect to the handling and segregation of client cash; the Filer does not believe that the interests of its clients will be prejudiced in any way by the commingling of Other Cash with MF Cash;

11. effective July 1, 2005, the MFDA Investor Protection Corporation (MFDA IPC) commenced offering coverage, within defined limits, to customers of MFDA Members against losses suffered due to the insolvency of MFDA members; the Filer does not believe that the Requested Relief will affect coverage provided by the MFDA IPC;

12. in the absence of the requested relief, the commingling of MF Cash with Other Cash in the Trust Account would contravene the Commingling Prohibition.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate upon the coming into force of any change in the MFDA IPC rules which would reduce the coverage provided by the MFDA IPC relating to MF Cash and Other Cash held in the Trust Account.

Allan Lim
Manager
Corporate Finance

2.2 Orders

2.2.1 D. E. Shaw & Co., L.P. et al. - ss. 80, 3.1(1), 78(1) of the CFA

Headnote

Subsection 78(1) of the Commodity Futures Act (Ontario) – Revocation of previous order granting relief from the adviser registration requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to certain non-redeemable investment funds and similar investment vehicles primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada.

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to certain non-redeemable investment funds and similar investment vehicles primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada, subject to certain terms and conditions.

Subsection 3.1(1) of the Commodity Futures Act (Ontario) – Assignment by the Commission to the Director of the powers and duties vested in the Commission under subsection 78(1) of the CFA to allow the Director to vary the present order by specifically naming an affiliate as an applicant to the order.

Statutes Cited
Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 3.1(1), 22(1)(b), 78(1), 80.
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers.

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

AND

IN THE MATTER OF
D. E. SHAW & CO., L.P.
D. E. SHAW & CO. ENERGY, L.L.C. AND
D. E. SHAW INVESTMENT MANAGEMENT, L.L.C.

ORDER
(Section 80 and Subsections 3.1(1) and 78(1) of the CFA)

UPON the application (the Application) of D. E. Shaw & Co., L.P. (**DESCO LP**), D. E. Shaw & Co. Energy, L.L.C (**DESCO Energy**) and D. E. Shaw Investment Management, L.L.C. (**DESIM**) and certain affiliates of, or entities organized by DESCO LP that provide notice to the Director as referred to below (each, an **Affiliate**, and together with DESCO LP, DESCO Energy, and DESIM, the **Applicants**) to the Ontario Securities Commission (the **Commission**) for:

(a) an order, pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to DESCO LP on December 19, 2006 (the **Previous Order**, as described below);

(b) an order, pursuant to section 80 of the CFA, that each of the Applicants (including their respective members, directors, partners, officers and employees), be exempt, for a period of five years, from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to certain non-redeemable investment funds and similar investment vehicles (the **Funds**) primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada; and

(c) an assignment by the Commission to each Director, acting individually, pursuant to subsection 3.1(1) of the CFA, of the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary this Order by specifically naming any Affiliate of DESCO LP as an Applicant to this Order in the circumstances described below;

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

AND UPON the Applicants having represented to the Commission that:

1. Each of the Applicants is organized under the laws of a jurisdiction other than Canada or the provinces or territories thereof. In particular, DESCO LP is a limited partnership formed under the laws of the State of Delaware, and DESCO Energy and DESIM are both limited liability companies formed under the laws of the State of Delaware.

2. Any Affiliate, whose name does not specifically appear in this Order, who wishes to rely on the exemption granted under this Order must execute and file with the Commission (Attention: Manager, Registrant Regulation) two copies of a notice (the **Notice** in the form of Part A to the attached Schedule A), applying to the Director to vary this Order to specifically name the Affiliate as an Applicant to this Order. The Notice must be filed with the Commission at least ten (10) days prior to the date that such Affiliate wishes to begin relying on this Order.

3. If, in the Director's opinion, it would not be prejudicial to the public interest, within ten (10) days after receiving the Notice, the Director will provide the Affiliate with a written acknowledgment and consent (the **Director's Consent**, in the form of Part B to the attached Schedule A). The Director's Consent will allow the Affiliate to rely on the exemption granted in this Order by varying this Order to specifically name the Affiliate as an Applicant to this Order. The Affiliate may not rely on this Order until it has received the Director's Consent.

4. If, after reviewing the Notice, the Director provides a written notice of objection (the **Objection Notice**) to the Affiliate, the Affiliate will not be permitted to rely on the exemption granted under this Order. However, the Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of such decision by the Commission.

5. Subsection 78(1) of the CFA provides that the Commission may, on the application of a person or company affected by the decision, make an order revoking or varying a decision of the Commission if, in the Commission's opinion, the order would not be prejudicial to the public interest. Further, subsection 3.1(1) of the CFA provides that a quorum of the Commission may assign any of its powers and duties under the CFA (except powers and duties under section 4 and Part IV) to the Director.

6. DESCO LP is registered under the *Securities Act* (Ontario) (the **OSA**) as an international adviser in the categories of investment counsel and portfolio manager. D. E. Shaw Securities, L.L.C., an affiliate of the Applicant, is registered under the OSA as an international dealer. None of the Applicants are or will be registered in any capacity under the CFA.

7. The Applicants act as investment advisers to the Funds, and may in the future establish or advise certain other non-redeemable investment funds or similar investment vehicles primarily offered outside Canada.

8. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside of Canada and primarily cleared through clearing corporations outside of Canada.

9. The Funds advised by the Applicants are and will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. Securities of the Funds will be offered to a small number of Ontario residents who will be, at the time of their investment, institutional investors or high net worth individuals that qualify as an "accredited investor" under National Instrument 45-106 – *Prospectus and Registration Exemptions*.

10. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser. Under the CFA, "adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in "contracts", and "contracts" means commodity futures contracts and commodity futures options.

11. By advising the Funds on investing in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada, the Applicants will be providing advice to Ontario investors with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as advisers under the CFA.

12. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures options and commodity futures contracts that is similar to the exemption from the adviser registration requirement in section 25(1)(c) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.10 (Privately Placed Funds Offered Primarily Abroad) of OSC Rule 35-502 – *Non Resident Advisers* (**Rule 35-502**).

13. As would be required under section 7.10 of Rule 35-502, securities of the Funds are, or will be:

    (a) primarily offered outside of Canada;

    (b) only distributed in Ontario through one or more registrants under the OSA; and

    (c) distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA.

14. Each of the Applicants, where required, is or will be appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction. In particular:

    (a) DESCO LP is currently a registered investment adviser with the U.S. Securities and Exchange Commission (the **SEC**), a registered commodity pool operator with the U.S. Commodities Futures Trading Commission (the **CFTC**), and a member of the U.S. National Futures Association (the **NFA**);

    (b) DESCO Energy is not required currently to be, and accordingly is not, registered with the SEC or the CFTC;

    (c) DESIM is currently a registered investment adviser with the SEC, but is not required currently to be, and accordingly is not, registered with the CFTC.

15. All of the Funds issue securities which are offered primarily abroad. None of the Funds has any intention of becoming a reporting issuer in Ontario or in any other Canadian jurisdiction.

16. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive disclosure that includes:

    (a) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or any of the Applicants advising the relevant Fund, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

    (b) a statement that the relevant Applicant advising the relevant Fund is not, or will not be, registered with the Commission under the CFA, and accordingly, the protections available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the relevant Fund.

17. On December 19, 2006, the Commission granted DESCO LP an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an investment adviser to the Funds (the **Previous Order**). However, the applicant in the Previous Order was only DESCO LP and did not include DESCO Energy or DESIM.

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

IT IS ORDERED pursuant to subsection 78(1) of the CFA that the Commission revokes the Previous Order;

AND IT IS FURTHER ORDERED pursuant to section 80 of the CFA that each of the Applicants are exempted from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser in connection with any one or more of the Funds, for a period of five years, provided that at the relevant time that such activities are engaged in:

(a) each Applicant, where required, is registered or licensed, or is entitled to rely on appropriate exemptions from such registrations or licences, to provide advice to the relevant Fund pursuant to the applicable legislation of its principal jurisdiction;

(b) the Funds invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada;

(c) securities of the Funds are:

    (i) primarily offered outside of Canada,

    (ii) only distributed in Ontario through one or more registrants under the OSA; and

(iii) distributed in Ontario, in reliance on an exemption from the prospectus requirements of the OSA and upon an exemption from the adviser registration requirement of the OSA under Section 7.10 of Rule 35-502;

(d) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents received disclosure that includes:

(i) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or any of the Applicants advising the relevant Fund, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

(ii) a statement that the relevant Applicant advising the relevant Fund is not, or will not be, registered with the Commission under the CFA, and accordingly, the protections available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the relevant Fund; and

(e) each Applicant either:

(i) is specifically named in this Order; or

(ii) has filed with the Commission the Notice and received the Director's Consent.

AND IT IS FURTHER ORDERED pursuant to subsection 3.1(1) of the CFA that the Commission assigns to each Director, acting individually, the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary this Order by specifically naming any Affiliate of DESCO LP as an Applicant to this Order (as described in paragraphs 2, 3 and 4 above) by providing such Affiliate with the Director's Consent, provided that, the Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of such decision by the Commission.

July 11, 2007

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

Schedule A

To: Manager, Registrant Regulation

Ontario Securities Commission

From: _____ (the **Affiliate**)

Re: In the Matter of D. E. Shaw & Co., L.P., D. E. Shaw & Co. Energy, L.L.C and D. E. Shaw Investment Management, L.L.C. (the **Named Applicants**)

OSC File No.: 2007/0499

Part A: Notice to the Ontario Securities Commission (the Commission)
The undersigned, being an authorized representative of the Affiliate, hereby represents to the Commission that:

(a) on July ___, 2007, the Commission issued the attached order (the **Order**), pursuant to section 80 of the *Commodity Futures Act* (Ontario) (the **CFA)**, that each of the Applicants (as defined in the Order) is exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser in connection with any one or more of the Funds (as defined in the Order), for a period of five years;

(b) the Affiliate, is an affiliate of, or entity organized by one of the Named Applicants;

(c) the Affiliate, whose name does not specifically appear in the Order, wishes to rely on the exemption granted under the Order and hereby applies to the Director, under section 78 of the CFA, to vary the Order to specifically name the Affiliate as an Applicant to the Order;

(d) the Affiliate has attached a copy of the Order to this Notice;

(e) the Affiliate confirms the truth and accuracy of all the information set out in the Order;

(f) this Notice has been executed and filed with the Commissioner at least ten (10) days prior to the date on which the Affiliate wishes to begin relying on the Order; and

(g) the Affiliate has not, and will not, rely on the Order until it has received a written acknowledgment and consent from the Director as provided in Part B herein.

Dated this ____ day of _____, 20___.

_____
By: Name:
Title:

Part B: Acknowledgment and Consent by Director

I acknowledge receipt of your Notice, dated _____ ____, 20__, providing the Commission with notice, as described in the Order, that the Affiliate, whose name does not specifically appear in the Order, wishes to rely on the exemption granted under the Order and has applied to have the Order varied to specifically name the Affiliate as an Applicant to the Order.

Based on the representations contained in the Order and in your Notice, I do not consider it prejudicial to the public interest to vary the Order to specifically name the Affiliate as an Applicant to the Order.

Dated this ____ day of _____, 20___.

_____
Name:
Title:
Ontario Securities Commission

2.2.2 Northern Abitibi Mining Corp. - s. 1(11)

Headnote

Section 1(11) – order that issuer is a reporting issuer for purposes of Ontario securities law – issuer already a reporting issuer in British Columbia, Alberta and Quebec – issuer's securities listed for trading on the TSX Venture Exchange – issuer has developed a "significant connection" to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11).

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

AND

IN THE MATTER OF
NORTHERN ABITIBI MINING CORP.

ORDER
(Section 1(11))

UPON the application of Northern Abitibi Mining Corp. (the "Applicant") for an order pursuant to clause 1(11)(b) of the Act that, for purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

AND UPON considering the application and the recommendations of the staff of the Ontario Securities Commission (the "Commission");

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant was incorporated under Part I of the Companies' Act of Quebec, by Letters Patent dated March 15, 1971. On September 22, 1981, the name was changed to include the French version, Corporation Miniere Nord Abitibi, as a result of Bill 101. On March 17, 1987, Special By-Law "A" 1987 continuing the Company under Part 1A of the Companies Act (Quebec) was adopted by the Issuer. On February 24, 1988, Special By-Law "B" 1987 was adopted by the Company. Its registered office in Province of Quebec is at 1, Place Ville-Marie, Bureau 4000, Montreal, Quebec, H3B 4M4 and its head office is located at Suite 500, 926-5th Avenue SW, Calgary, Alberta, T2P 0N7;

2. The authorized capital of the Applicant consists of an unlimited number of common shares of which 47,470,928 common shares are issued and outstanding;

3. The Applicant has been a reporting issuer in the Provinces of British Columbia, Alberta and Québec since November 26, 1999, October 11, 1988 and March 14, 1974 respectively;

4. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than British Columbia, Alberta and Québec;

5. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the *Securities Act* (British Columbia) (the B.C. Act), the *Securities Act* (Alberta) (the Alberta Act) or the *Securities Act* (Québec) (the Québec Act), and, to the best of its knowledge, is not in default of any of its obligations under the B.C. Act, the Alberta Act or the Québec Act;

6. The continuous disclosure requirements of the B.C. Act, the Alberta Act and the Québec Act are substantially the same as the requirements under the Act;

7. The continuous disclosure materials filed by the Applicant under the B.C. Act, the Alberta Act and the Québec Act since February 19, 1997 are available on the System for Electronic Document Analysis and Retrieval (SEDAR);

8. The Applicant's securities are traded on the TSX Venture Exchange (TSXV) under the symbol "NAI". The Applicant's securities are not traded on any other stock exchange or trading or quotation system;

9. The Applicant is not in default of any of the rules or regulations of the TSXV;

10. Neither the Applicant nor any of its predecessor entities nor any of their officers, directors or controlling shareholders has or have:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision;

11. Neither the Applicant nor any of its predecessor entities nor any of their officers, directors or controlling shareholders is, has or have been subject to:

    (a) any known ongoing or concluded investigations by a Canadian securities regulatory authority, or a court or

regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

(b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years;

12. None of the Applicant or its officers, directors or any controlling shareholder, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

(a) any cease trade or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

(b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years;

13. The Applicant has a significant connection to Ontario as its Ontario shareholders hold more than 37% of the issued and outstanding common shares of the Applicant;

14. The Applicant will remit all participation fees due and payable by it pursuant to Commission Rule 13-502 -- Fees by no later than two business days from the date of this Order;

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

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED July 5, 2007

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.2.3 Sulja Bros. Building Supplies, Ltd. (Nevada) et al.

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

AND

IN THE MATTER OF
SULJA BROS. BUILDING SUPPLIES, LTD. (NEVADA),
SULJA BROS. BUILDING SUPPLIES LTD.,
KORE INTERNATIONAL MANAGEMENT INC.,
PETAR VUCICEVICH AND ANDREW DeVRIES

ORDER

WHEREAS on December 22 2006, the Ontario Securities Commission (the "Commission") ordered pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that immediately for a period of 15 days from the date thereof: (a) all trading in securities of Sulja Bros. Building Supplies, Ltd. (Nevada) ("Sulja Nevada") cease; and (b) any exemptions in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS on December 27, 2006, the Commission issued a Notice of Hearing and Statement of Allegations in this matter;

AND WHEREAS the Respondents Sulja Nevada, Sulja Bros. Building Supplies Ltd. ("Sulja Ontario"), Kore International Management Inc. ("Kore"), and Petar Vucicevich ("Vucicevich") do not oppose the continuation of the Temporary Order;

AND WHEREAS on December 22, 2006 and December 28, 2006, respectively, the Respondent Andrew DeVries was served with the Temporary Order and the Notice of Hearing and Statement of Allegations and, having notice of the hearing, did not appear before the Commission to oppose the continuation of the Temporary Order;

AND WHEREAS on January 8, 2007 the Temporary Order was extended to March 23, 2007;

AND WHEREAS on March 23, 2007 the Temporary Order was extended to July 5, 2007;

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

IT IS ORDERED THAT:

1. the Temporary Order is continued until a date in August or September, 2007 to be scheduled by the Commission.

DATED at Toronto this 3rd day of July, 2007.

"Patrick LeSage"

"Lawrence Ritchie"

"Wendell S. Wigle"

2.2.4 Al-Tar Energy Corp. et al. - ss. 127(1), 127(8)

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

AND

**IN THE MATTER OF
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**

**ORDER
(Sections 127(1) & 127(8))**

WHEREAS on July 3, 2007 the Ontario Securities Commission (the "Commission") issued a Temporary Order pursuant to section 127(5) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") that: (i) all trading by Al-tar Energy Corp., Alberta Energy Corp. and their officers, directors, employees and/or agents in securities of Al-tar Energy Corp. and Alberta Energy Corp. shall cease; and (ii) the Respondents cease trading in all securities (the "Temporary Order");

AND WHEREAS on July 3, 2007, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on July 6, 2007 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on July 17, 2007 at 10 a.m;

AND WHEREAS Staff of the Commission ("Staff") attempted to serve all of the Respondents a certified copy of the Temporary Order and a Notice of Hearing at all known postal addresses, as well as electronic mail addresses as evidenced by the Affidavit of Muriel Carson sworn July 13, 2007 and the Affidavit of Kim Berry sworn July 13, 2007 filed with the Commission in the Evidence Brief of Staff;

AND WHEREAS Staff served Alberta Energy Corp. and Julian Sylvester with a certified copy of the Temporary Order and a Notice of Hearing and all other Staff attempts at service of the Respondents have been unsuccessful;

AND WHEREAS the Commission held a Hearing on July 17, 2007 and none of the Respondents attended before the Commission;

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

AND WHEREAS pursuant to section 127(8) satisfactory information has not been provided to the

Commission within the fifteen (15) day period after the making of the Temporary Order;

IT IS HEREBY ORDERED pursuant to section 127(8) that the Temporary Order is extended to September 11, 2007; and

IT IS FURTHER ORDERED that the Hearing is adjourned to Tuesday, September 11, 2007 at 10 a.m.

DATED at Toronto this 17th of July, 2007.

"James E.A. Turner"

"Suresh Thakrar"

2.2.5 Deer Valley Shopping Centre Limited Partnership and Amalgamated Income Limited Partnership - s. 144

Headnote

Partial revocation of a cease trade order in connection with a take-over bid, to permit, among other things, the making of the bid, the tender of securities and the take-up and payment for tendered securities.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
DEER VALLEY SHOPPING CENTRE LIMITED PARTNERSHIP AND AMALGAMATED INCOME LIMITED PARTNERSHIP ("AMALGAMATED LP" OR THE "APPLICANT")

ORDER
(Section 144)

WHEREAS the securities of Deer Valley Shopping Centre Limited Partnership ("**Deer Valley LP**") are subject to a cease trade order made by the Director dated September 29, 2006 pursuant to paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act, which order was made in connection with a temporary cease trade order made by the Director dated September 18, 2006 pursuant to paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act (collectively, the "**Cease Trade Order**") directing that trading in the securities of Deer Valley LP cease unless revoked by a further order of revocation;

AND WHEREAS the Applicant is proposing to make an unsolicited offer to purchase, pursuant to the rules for take-over bids applicable to such offer, on and subject to the terms and conditions of the proposed offer and circular, all of the outstanding securities of Deer Valley LP (the "**Offer**").

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the "**Commission**") pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order.

AND WHEREAS the Applicant has represented to the Commission that:

1. Deer Valley LP is a limited partnership registered under the Partnership Act (Alberta) on July 2, 1981 and has been a reporting issuer under the Act since May 3, 1983. The general partner of Deer Valley LP, Deer Valley Shopping Centre Ltd., has its head office in Winnipeg, Manitoba.

2. The authorized capital of Deer Valley LP consists of 2,500 limited partnership units ("**Units**"). Other than the Units, Deer Valley LP has no securities, including debt securities, outstanding. According to the Deer Valley LP audited financial statements for the year ended December 31, 2006, Deer Valley LP has 185 Unitholders ("**Unitholders**"), including the Applicant.

3. Deer Valley LP is a reporting issuer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Newfoundland & Labrador and is not a reporting issuer in any other jurisdiction in Canada.

4. The Units are not listed or quoted on any exchange or market in Canada or elsewhere. In addition to the Cease Trade Order, the securities of Deer Valley LP are also subject to cease trade orders issued by each of the securities regulatory authorities in the provinces of Saskatchewan, Manitoba, British Columbia and Quebec as described below.

5. The Cease Trade Order, and the similar orders of each of the securities regulatory authorities in the provinces of Saskatchewan (February 12, 2001), Manitoba (September 27, 2006), British Columbia (May 21, 1998) and Quebec (October 22, 1998), were issued due to the failure of Deer Valley LP to file with such securities regulatory authorities interim financial statements and audited annual financial statements for various reporting years as required by applicable securities legislation.

6. Amalgamated LP is a limited partnership registered under the Partnership Act (British Columbia) on November 24, 1994. The general partner of Amalgamated LP, Amalgamated General Partner Ltd., has its head office in Calgary, Alberta.

7. The Applicant is a reporting issuer or has equivalent status in all jurisdictions in Canada and its limited partnership units ("**Amalgamated LP Units**") are posted and listed on the Toronto Stock Exchange under the trading symbol "AI.UN".

8. Amalgamated LP is proposing to make the Offer to acquire all the Units of Deer Valley LP, not already beneficially owned, directly or indirectly, by Amalgamated LP or affiliates thereof in exchange for, at the election of each Unitholder, cash or Amalgamated LP Units, by mailing a formal take-over bid circular to the Unitholders and filing it with the Commission in accordance with the Act.

9. Amalgamated LP is proposing to make the Offer by mailing a circular to Unitholders in July 2007, and the Offer is to remain open for a minimum of 35 days.

10. The terms of the Cease Trade Order prohibit Amalgamated LP from:

    10.1 making the Offer to the Unitholders;

    10.2 entering into lock-up agreements with the Unitholders in connection with the Offer;

    10.3 taking-up and paying for the Units tendered to the Offer; and

    10.4 taking such other actions in further of a trade in the Units as may be reasonably required to permit the Offer and the tenders of Units there under.

11. The Applicant has also applied to the securities regulatory authorities in each of the provinces of Saskatchewan, Manitoba, British Columbia and Quebec for a partial revocation of the cease trade orders affecting the securities of Deer Valley LP in effect in those provinces.

AND WHEREAS considering the Application and the recommendation of staff to the Director;

AND WHEREAS the Director is satisfied that the following order is not prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order is hereby partially revoked solely to permit:

1. Amalgamated LP to make the Offer by mailing of the circular to Unitholders;

2. Amalgamated LP to enter lock-up agreements with the Unitholders in connection with the Offer;

3. Unitholders to tender Units to the Offer;

4. Amalgamated LP to take-up and pay for Units tendered to the Offer; and

5. Amalgamated LP to take such other actions in furtherance of a trade of the Units as may be reasonably required to permit the Offer and the tenders of, and the taking up and paying for, the Units there under.

DATED July 5th, 2007.

"Iva Vranic"
Manager, Corporate Finance

2.2.6 UOB Kay Hian (U.S.) Inc. - s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 100(2), 208(2), 211.

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

AND

IN THE MATTER OF
ONTARIO REGULATION 1015, R.R.O. 1990,
AS AMENDED (the Regulation)

AND

IN THE MATTER OF
UOB KAY HIAN (U.S.) INC.

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of UOB Kay Hian (U.S.) Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission)** for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada in order for the Applicant to be registered under the Act as a dealer in the category of international dealer;

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 has filed an application for registration as a dealer under the Act in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not presently registered in any capacity under the Act.

2. The Applicant is a corporation organized under the laws of the Sate of New York, U.S.A. The applicant's principal place of business is located in New York, N.Y., U.S.A.

3. The Applicant is registered in the United States as a broker-dealer with the Securities and Exchange Commission. The Applicant is also a member in good standing of the National Association of Securities Dealers, Inc.

4. The applicant carries on the business of a broker-dealer in the U.S. (as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934)

5. The Applicant does not currently act as an underwriter in the United States or in any other jurisdiction outside of the United States.

6. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of international dealer as it does not carry on the business of an underwriter in a country other than Canada.

7. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

July 17, 2007

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.2.7 Execution, LLC - s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 100(2), 208(2), 211.

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

AND

IN THE MATTER OF
ONTARIO REGULATION 1015, R.R.O. 1990,
AS AMENDED (the Regulation)

AND

IN THE MATTER OF
EXECUTION, LLC

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of Execution, LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada in order for the Applicant to be registered under the Act as a dealer in the category of international dealer;

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 has filed an application for registration as a dealer under the Act in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not presently registered in any capacity under the Act.

2. The Applicant is a limited liability company organized in the State of Connecticut. The

Applicant's principal place of business is located in Greenwich, Connecticut and the Applicant is not presently registered in any capacity with the Commission.

3. The Applicant is registered in the United States as a broker-dealer with the Securities and Exchange Commission. The Applicant is permitted to carry on broker-dealer activities in the United States. The Applicant's principal business is limited to broker-dealer activities involving institutional clients.

4. The Applicant does not currently act as an underwriter in the United States or in any other jurisdiction outside of the United States.

5. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of international dealer as it does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

July 13, 2007

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.2.8 Juniper Fund Management Corporation et al. - s. 127(7)

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)

ORDER
Section 127(7)

WHEREAS on March 8, 2006, the Ontario Securities Commission (the "Commission") ordered pursuant to section 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in the securities of the Juniper Income Fund and the Juniper Equity Growth Fund (the "Funds") shall cease forthwith for a period of 15 days from the date thereof (the "Temporary Order");

AND WHEREAS pursuant to sections 127(1) and 127(5) of the Act, a hearing was scheduled for March 23, 2006 at 10:00 a.m. (the "Hearing");

AND WHEREAS the Respondents were served with the Temporary Order, the Notice of Hearing dated March 21, 2006, the Statement of Allegations dated March 21, 2006 and the Affidavit of Trevor Walz sworn March 17, 2006;

AND WHEREAS on March 23, 2006, the Commission ordered: (i) an extension of the Temporary Order to May 4, 2006; and (ii) an adjournment of the Hearing to May 4, 2006;

AND WHEREAS Staff have advised that the Commission issued two Directions dated May 4, 2006 under section 126(1) of the Act freezing bank accounts of The Juniper Fund Management Corporation ("JFM"), the Funds and Roy Brown without notice to any of the Respondents;

AND WHEREAS on May 4, 2006, the Commission ordered: (i) the Hearing adjourned to May 23, 2006; (ii) the Temporary Order extended to May 23, 2006; (iii) JFM not to be paid any monthly management fees; (iv) JFM's requests for funds to pay expenses incurred by the Funds to continue to be subject to approval by NBCN Inc. ("NBCN"); (v) weekly lists of expenses by the Funds to continue to be provided to and reviewed by Staff; and (vi) neither JFM nor Roy Brown to deal in any way with the assets or investments of the Funds;

AND WHEREAS Staff have advised that on May 11, 2006 and June 30, 2006, the Ontario Superior Court of Justice (the "Superior Court") ordered that the two Directions dated May 4, 2006 freezing bank accounts of JFM, the Funds and Roy Brown be extended with the exception of the personal accounts and one JFM account as defined in the Superior Court orders dated May 11, 2006 and June 30, 2006;

AND WHEREAS the two Directions expired on September 30, 2006;

AND WHEREAS on May 18, 2006, the Superior Court issued an ex parte order appointing Grant Thornton Limited as Receiver over the assets, undertakings and properties of JFM and the Funds (the "Receivership Order");

AND WHEREAS on May 18, 2006, the Commission granted leave to McMillan Binch Mendelsohn LLP to withdraw as counsel for the Respondents;

AND WHEREAS on May 23, 2006, the Commission ordered: (i) the Hearing adjourned to September 21, 2006; and (ii) the Temporary Order extended to September 21, 2006;

AND WHEREAS on June 2, 2006, the Superior Court confirmed and extended the Receivership Order and approved the conduct of the Receiver and its counsel as set out in the First Report of the Receiver dated May 30, 2006;

AND WHEREAS on September 21, 2006, the Commission ordered: (i) the Hearing adjourned to November 8, 2006; and (ii) the Temporary Order extended to November 8, 2006;

AND WHEREAS NBCN and National Bank Financial Ltd. ("NBFL") have brought a motion for intervenor status in these proceedings (the "Intervenor Motion");

AND WHEREAS on November 7, 2006, the Commission adjourned the Hearing and the Intervenor Motion to December 13, 2006 and extended the Temporary Order to December 13, 2006;

AND WHEREAS on November 17, 2006, the Superior Court ordered, *inter alia*, that: (i) the Receiver is authorized to call a meeting of unitholders of the Funds; and (ii) the conduct of the Receiver and its counsel, as described in the Second and Third Reports of the Receiver, is approved without prejudice to the right of NBFL and NBCN to dispute the Receiver's conclusion that NBFL and NBCN hold no units in the Juniper Equity Growth Fund;

AND WHEREAS by letter dated December 6, 2006, counsel for NBCN and NBFL advised that they intend to withdraw the Intervenor Motion;

AND WHERAS on December 13, 2006, the Commission ordered: (i) an extension of the Temporary Order to March 2, 2007; and (ii) an adjournment of the Hearing to March 2, 2007;

AND WHEREAS on December 13, 2006, counsel for the Receiver advised that the Receiver will shortly be sending out an update letter to all unitholders explaining the steps taken by the Receiver and the status of the ongoing receivership;

AND WHEREAS on December 13, 2006 Staff advised that Staff's investigation and the investigation by the Receiver are both ongoing and there was a reasonable prospect that Staff's investigation would be completed by March 2007;

AND WHEREAS on December 13, 2006, counsel for the Receiver and Staff of the Commission had consented to: (i) an adjournment of the Hearing to March 2, 2007; and (ii) an extension of the Temporary Order to March 2, 2007 and counsel for Roy Brown did not consent to the adjournment or the extension of the Temporary Order and requested the earliest possible return date;

AND WHEREAS on December 13, 2006, counsel for Roy Brown and Staff of the Commission scheduled a tentative pre-hearing conference with a Commissioner on February 27, 2007 at 11:00 a.m.;

AND WHEREAS on March 2, 2007, Staff advised that Staff's investigation and the investigation by the Receiver are both ongoing and that there is a reasonable prospect that Staff's investigation will be completed by April 2007;

AND WHEREAS on March 2, 2007, Staff advised that the tentative pre-hearing conference scheduled for February 27, 2007 did not proceed as Staff's investigation was ongoing;

AND WHEREAS on March 2, 2007, Staff advised that 13 volumes of initial Staff disclosure were sent to counsel for Roy Brown on February 23, 2007;

AND WHEREAS on March 2, 2007, counsel for the Receiver provided an update of the ongoing receivership and advised that an update letter had been sent to all unitholders;

AND WHEREAS on March 2, 2007, Staff of the Commission requested and counsel for the Receiver consented to: (i) an adjournment of the Hearing to May 22, 2007; and (ii) an extension of the Temporary Order to May 22, 2007, and counsel for Roy Brown did not consent to the adjournment and extension of the Temporary Order;

AND WHEREAS on March 2, 2007, the Commission ordered: (i) an extension of the Temporary Order to May 22, 2007; and (ii) an adjournment of the Hearing to May 22, 2007;

AND WHEREAS the First, Second, Third and Fourth Reports of the Receiver have been filed with the Commission;

AND WHEREAS on May 22, 2007, based on Staff's submissions, the panel expected that Staff would conclude their investigation, amend their Statement of Allegations, provide additional disclosure to the Respondents and have attended at a pre-hearing conference in order to set a date for a hearing on the merits, all by mid-July 2007;

AND WHEREAS on May 22, 2007, Staff of the Commission requested and the Commission ordered: (i) an adjournment of the Hearing to July 17, 2007; and (ii) an extension of the Temporary Order to July 17, 2007, and whereas counsel for Roy Brown did not consent and counsel for the Receiver did consent to the adjournment and extension of the Temporary Order;

AND WHEREAS Staff of the Commission provided 15 volumes of disclosure to counsel for Roy Brown on June 14 and 21, 2007 and the remaining 5 volumes of disclosure on July 9, 2007;

AND WHEREAS Staff of the Commission amended the Statement of Allegations on July 5, 2007;

AND WHEREAS a pre-hearing conference has been scheduled for July 20, 2007 at 2:00 p.m.;

AND WHEREAS Staff of the Commission have requested and counsel for the Receiver has consented to and counsel to Roy Brown has neither consented to nor is opposed to: (i) an adjournment of the Hearing to September 4, 2007; and (ii) an extension of the Temporary Order to September 4, 2007.

AND WHEREAS it is in the public interest to extend the Temporary Order to September 4, 2007;

IT IS ORDERED pursuant to subsection 127(7) of the Act that:

(a) the Hearing is adjourned to September 4, 2007 at 2:30 p.m.; and

(b) the Temporary Order is extended until September 4, 2007.

DATED at Toronto this 17th day of July, 2007

"Suresh Thakrar"

"Robert Shirriff"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Momentas Corporation et al. - ss. 127 and 127.1 of the SA

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

AND

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

REASONS AND DECISION REGARDING SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act)

Hearing:	June 21, 2007		
Decision:	July 12, 2007		
Panel:	Wendell S. Wigle, Q.C.	-	Commissioner (Chair of the Panel)
	Carol S. Perry	-	Commissioner
Counsel:	Pamela Foy	-	For Staff of the Ontario Securities Commission
	Scott Hutchinson	-	For Alexander Funt
	Howard Rash	-	For himself
	Momentas Corporation	-	Unrepresented

REASONS AND DECISION REGARDING SANCTIONS AND COSTS

I. Background

[1] This was a bifurcated 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"). The hearing on the merits was held on May 23-25, 2006, and August 8, 2006, and a decision was rendered on September 5, 2006, whereby the Commission found that Momentas Corporation ("Momentas"), Howard Rash ("Rash") and Alexander Funt ("Funt") (collectively the "Respondents") violated registration requirements under the Act with respect to the sale of Momentas' securities (the "Convertible Debentures").

[2] Following the release of the decision for the hearing on the merits, we held a separate hearing (the "Sanctions and Costs Hearing"), on June 21, 2007, to consider additional evidence and submissions from Staff and the Respondents regarding sanctions and costs.

[3] At a hearing held on March 21, 2007, the Sanctions and Costs Hearing was set down for June 21, 2007. This adjournment was the result of accommodating Rash for health reasons.

[4] The Sanctions and Costs Hearing, held on June 21, 2007, was attended by Rash, who was self-represented, and counsel for Funt. Momentas was unrepresented.

[5] These are our reasons and decision as to the appropriate sanctions and costs against the Respondents.

II. Decision and Reasons Dated September 5, 2006

[6] The sanctions and costs sought by Staff in this matter apply to the findings made in our Decision and Reasons dated September 5, 2006. To summarize, three main issues were addressed during the hearing on the merits:

(1) whether Momentas was a market intermediary and [was] engaging in the business of trading securities in Ontario without appropriate registration in violation of the Act;

(2) whether Rash and Funt engaged in conduct which constitutes "trading" in securities without being registered by carrying out acts directly or indirectly in furtherance of trades of Convertible Debentures; and

(3) whether Rash and Funt […] acted in a similar capacity to officers and directors of Momentas and authorized such trades.

(*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 6)

[7] Upon considering the evidence, the following findings were made:

(1) Momentas was a market intermediary and it did not benefit from a registration exemption (*Re Momentas Corp.*, *supra* at paras. 64 and 67 to 74);

(2) Momentas, Rash and Funt carried out acts in furtherance of trading the Convertible Debentures (*Re Momentas Corp.*, *supra* at paras. 81 to 83);

(3) As the directing minds of Momentas, Rash and Funt were de facto officers and directors of Momentas and, in that capacity, planned and authorized Momentas' breach of the Act (*Re Momentas Corp.*, *supra* at paras. 113 to 116).

[8] It is this conduct that we must consider when determining the appropriate sanctions to apply in this matter.

III. Additional Evidence Adduced at the Sanctions and Costs Hearing

[9] In addition to the evidence led at the hearing on the merits, Staff provided additional evidence regarding sanctions and costs.

[10] In particular, Staff entered into evidence the corporation profile report of Momentas Realty, dated April 1, 2005, and the corporation profile report of Mercantile RX, dated January 7, 2005. Staff adduced this evidence to demonstrate the non-arm's length nature of the relationship between Rash and Funt and these corporations and that Rash and Funt benefited directly from payments Momentas made to these companies.

[11] As well, Staff requested to enter into evidence a transcript from the Commission proceeding *In the matter of Discovery Biotech Inc. and Graycliff Resources Inc.*, dated June 26, 2003. This transcript relates to a cease trade order in a separate and unrelated matter, and Staff requested to enter this transcript into evidence because Rash admitted that he was convicted of securities fraud in Switzerland. Rash objected to this evidence on the grounds that his prior testimony in a separate and unrelated matter, which he gave voluntarily, would now be self-incriminating. In all the circumstances, we have decided to disregard that transcript in our determination of this matter.

[12] Lastly, Staff adduced evidence regarding the costs incurred in this matter. For each member of Staff involved, we were provided with a time sheet listing the date, number of hours worked, and details regarding the type of work that was completed by each Staff member. The Respondents did not contest this evidence.

IV. Analysis and Conclusions

(a) Staff's Submissions

(i) Sanctions Requested by Staff

[13] Staff requested that the following sanctions be ordered in this matter:

(1) a permanent cease trade order for the Respondents;

(2) exemptions contained in Ontario securities law permanently do not apply to the Respondents;

(3) Rash and Funt must resign from any positions they hold as an officer or director of any issuer;

(4) Rash and Funt be permanently prohibited from becoming or acting as a director of any issuer;

(5) Rash and Funt jointly disgorge $7,862,000.00;

(6) Rash and Funt each pay an administrative penalty in the amount of $50,000.00;

(7) Rash and Funt be reprimanded; and

(8) Rash and Funt pay the amount of $38,782.00 towards the costs of or related to the hearing incurred by or on behalf of the Commission.

[14] According to Staff, the allegations proved in this matter with respect to unregistered trading are very serious, and aggravating factors exist which necessitate the imposition of Staff's requested sanctions.

(ii) Aggravating Factors

[15] Staff emphasized in both oral and written submissions that Rash and Funt were the controlling minds and management of Momentas because they authorized the issuance of the Convertible Debentures and were ultimately responsible for ensuring compliance with Ontario securities law. For example, Staff refers to the fact that no decisions were made or ratified by any of the formally appointed directors. Rather, all of the business decisions of the corporation were made by Rash and Funt (*Re Momentas Corp.*, *supra* at para. 105). On this basis, Staff submits that Rash and Funt should be held accountable for Momentas' actions and sanctioned appropriately because section 129.2 of the Act permits the Commission to hold individuals acting as officers and directors (including "de facto" officers and directors) liable for breaches of a company. As well, Staff also referred us to a number of cases dealing with the doctrine of "lifting the corporate veil". Although these cases are from a bankruptcy or fraud context, Staff submits that the doctrine of "lifting the corporate veil" exemplifies that officers and directors cannot shield their conduct by acting for an incorporated company.

[16] Staff also pointed out that Funt and Rash were listed as directors and officers of the companies Mercantile RX and Momentas Realty and this is evident from the corporation profiles that were adduced in evidence. Staff submits that these corporation profiles are relevant because Momentas invested funds from the proceeds of the offering of the Convertible Debentures in these companies. At the hearing on the merits of this matter, we found that Momentas invested: (1) $385,000.00 in Mercantile RX; and (2) $400,000.00 in Momentas Realty (*Re Momentas Corp.*, *supra* at para. 60). According to Staff, this is an aggravating factor to consider because these non-arm's length relationships between Momentas, Rash, Funt, Mercantile RX and Momentas Realty were not disclosed to the investing public in Momentas' offering memorandum nor in Momentas' press releases dated June 29, 2004 and January 27, 2005.

[17] Another aggravating factor that Staff focused on was the lack of disclosure Momentas made to the public regarding the operations of Momentas. Staff pointed out that investors were not informed in the offering memorandum that new investment funds from the offering were being used to pay interest owed to other investors. Staff also submitted that Momentas did not make any investments in fixed income securities to meet its interest obligations as specified in the offering memorandum.

[18] An important aggravating factor that Staff also focused on was the fact that Rash and Funt never disclosed their management draws from Momentas. Rash and Funt took as management draws approximately $1,300,000.00 and $1,260,000.00 respectively from the total proceeds of $7,862,000.00 raised from the sale of the Convertible Debentures.

[19] Staff also brought our attention to the fact that while selling the Convertible Debentures, Momentas purportedly relied upon an exemption for selling securities to accredited investors contained in *O.S.C. Rule 45-501 – Ontario Prospectus and Registration Requirements* ("Rule 45-501"), and that this was misleading to investors.

[20] Furthermore, Staff submitted that regardless of the aggravating factors present, the breaches of the Act in this case are very serious and investors lost a significant amount of funds, and this alone justifies the imposition of severe sanctions in order to deter similar conduct like this from occurring in the future.

[21] Staff also made reference to "fraud" in both oral and written submissions when discussing the Respondents' conduct in this matter. Both Rash and counsel for Funt objected to this on the grounds that fraud was not mentioned in the original Statement of Allegations in this matter and was not brought up during the hearing on the merits in this matter. We note that allegations of fraud were not a part of this proceeding. This was a proceeding dealing with whether market intermediaries were selling securities in violation of the Act (i.e. by not being properly registered or by not qualifying for an exemption). In addition, fraud is not mentioned anywhere in our decision for the hearing on the merits in this matter. As a result, we did not take into consideration any of Staff's submissions relating to fraud.

(b) Funt's Submissions

[22] During submissions, counsel for Funt raised a number of mitigating factors, which in his view should be considered when determining the severity of the sanctions to be applied to Funt. Specifically, counsel for Funt took the position that lesser sanctions should be imposed on Funt because: (1) Funt was not the "real decision maker"; (2) ambiguity surrounding the state of the law on the issue of a market intermediary existed; and (3) at all times during the hearing, Funt's conduct was efficient and economical and contributed to the timely conduct of this proceeding.

[23] To support the position that Funt was not the "real decision maker" behind the activities of Momentas, counsel for Funt referred us to the findings made during the hearing on the merits. Specifically, reference was made to the following paragraph:

> *With respect to Funt, we find that his day to day role and responsibilities were essentially that of a sales manager at Momentas.* The evidence of Morrison is that Funt primarily supervised and monitored the qualifiers and salespeople – that is the only area of Momentas' operations where Funt is indicated to have exercised any form of control independent of Rash or others. However, *even in the role as sales manager, Funt's responsibility was limited* to monitoring qualifiers and salespeople to ensure that they followed a script that was prepared by Rash. Other responsibilities as sales manager were as followed: (i) the qualifiers were trained and supervised by a qualifying manager, who in turn reported to Funt, (ii) both Rash and Funt were involved in hiring qualifiers and salesmen, (iii) both Rash and Funt provided training to salespeople, (iv) the salespeople reported to both Rash and Funt, and (v) both Rash and Funt determined the compensation to be paid to qualifiers and salespeople. [Emphasis added] (*Re Momentas Corp.*, *supra* at para. 109)

[24] According to Counsel for Funt, this paragraph demonstrates that Funt was not the real decision maker and that Funt only held a junior position as a sales person. Further, counsel for Funt emphasized that Rash was the real decision maker behind the activities of Momentas and this is evident from the findings set out in paragraph 108 of the decision of the hearing on the merits in this matter, which states that "Morrison described Rash as the person who is "basically in charge" and is the "main decision maker"." (*Re Momentas Corp.*, *supra* at para. 108)

[25] In addition, counsel for Funt explained that due to Funt's age and health issues, he was unable to be significantly involved with the activities of Momentas. In particular, reference was made to the fact that Funt was 72 to 73 years old during the time that the breaches of securities law took place in 2004. As well, during 2004, Funt had undergone hip surgery and was unable to actively participate in the activities of Momentas at this time. Counsel for Funt also emphasized the fact that Funt is an elderly man and has no intention to return to business and work in the capital markets, thus, he poses no risk to the capital markets and this should be taken into account in the sanctions imposed.

[26] Moreover, counsel for Funt pointed out that Funt relied on Rash and deferred to him on many issues since Rash was a lawyer. According to counsel for Funt, this demonstrates that Funt did not make all the decisions and that Rash was the ultimate decision maker.

[27] However, we disagree with the position that Funt did not have decision making power, and that Funt was merely a junior salesperson. We rely on the findings from the decision for the hearing on the merits in this matter which establish that Funt was very involved in the decision making process for Momentas. At paragraph 110 of the decision we described in detail Funt's decision making responsibilities as follows:

> However, the evidence discloses that Funt was also involved in decision-making with respect to other aspects of Momentas' operations. For example, Morrison's evidence is that Funt was "involved" with Rash in making the following decisions: (i) the decision to appoint Morrison as a director, (ii) the decision to compensate Morrison with share capital, (iv) the decision to hire Kostantakos, (v) the decision to approve the "management draws" to Rash and Funt. (*Re Momentas Corp.*, *supra* at para. 110)

[28] The above cited paragraph demonstrates that Funt participated in a number of significant decisions regarding Momentas. Furthermore, the evidence presented at the hearing on the merits of this matter established that most of Momentas' business decisions were made by the consensus of Funt and Rash and that they were both the most familiar with the overall business of Momentas (*Re Momentas Corp.*, *supra* at para. 111). Essentially, "[…] the evidence discloses that Funt discussed matters regarding the operation of Momentas with Rash and was involved in the decision-making process of Momentas" (*Re Momentas Corp.*, *supra* at para. 112).

[29] Counsel for Funt also argued before us that lesser sanctions should be imposed in this case because the law dealing with market intermediaries was not well settled and established prior to this proceeding. Essentially, counsel for Funt submits that the decision of the hearing on the merits was a test decision that addressed and settled an important issue regarding the status of a market intermediary which is a matter of public interest and this is an important precedent for other participants in the capital markets. As a result, Funt should not bear the burden of having to pay for this decision. In addition, at all times Funt's

participation contributed to the efficient and timely resolution of this matter. Nothing was done to draw the proceeding out or to delay it.

[30] Counsel for Funt did not object to the amount of costs sought by Staff in this matter.

(c) Rash's Submissions

[31] During the Sanctions and Costs Hearing, Rash made oral submissions regarding mitigating factors that should be considered in the determination of appropriate sanctions in this matter.

[32] First of all, Rash submitted that he was not the only person making decisions on the behalf of Momentas. Rash explained that decisions were made on a consensus basis between himself and Funt, and that this fact was accepted in the decision on the hearing on the merits in this matter (*Re Momentas Corp.*, *supra* at para. 111). Rash also pointed out that he retained a law firm for legal advice and work relating to the Convertible Debentures. Therefore, Rash submits that he alone was not responsible for all the actions and decisions of Momentas.

[33] Secondly, Rash submitted that the fact the law regarding market intermediaries was not settled and established should also be considered in the determination of appropriate sanctions. In this respect Rash's submissions were similar to those made by Funt's counsel. Specifically, Rash pointed out that at the time the conduct in question took place, it was not known that both employer and employee are deemed to be market intermediaries and that this position was not enunciated in the applicable law at the time.

[34] Thirdly, Rash takes the position, that Momentas did have a valid business purpose and this purpose was disclosed to investors in the DVD package that was sent out to investors. Rash explained that in his view, the reason that Momentas was unable to achieve its business goals was the fact that Commission proceedings had been commenced against Momentas and this affected Momentas' ability to carry out its business plan.

[35] Fourthly, Rash pointed out that although sanctions have not been imposed yet, he has already been affected by the Commission's decision in this matter. Rash explained that the Commission's decision for the hearing of the merits in this matter was publicized in the media. As a result, Rash's friends, family and colleagues are all aware of these proceedings. Furthermore, as a result of this public decision, Rash submitted that his reputation has been damaged irreparably and this has affected his ability to make a living.

[36] Rash did not dispute the costs requested by Staff. When asked about this by the Panel, Rash admitted that he found that the amount of costs sought by Staff were reasonable in the circumstances.

(d) Relevant Considerations for Imposing Sanctions

[37] Staff, Rash and counsel for Funt all provided informative submissions regarding appropriate sanctions in this matter. In considering these submissions, we must look to the relevant considerations for imposing sanctions that have been established by this Commission.

[38] First of all, section 1.1 of the Act specifies that the Commission's mandate is to:

(1) provide protection to investors from unfair, improper or fraudulent practices; and

(2) foster fair and efficient capital markets and confidence in capital markets.

[39] Evidently, one of the paramount objectives of the Act is to protect the public (*Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at para. 11). This has also been affirmed in *Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("Mithras"), where the Commission stated that:

> […] 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)

[40] Essentially, "we have a duty to take steps to make sure that manipulative or other improper practices in the financial marketplace are not tolerated" (*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 13) and this can be accomplished by ensuring that the appropriate sanctions are imposed to deter similar conduct from occurring in the future.

[41] In determining the appropriate sanctions for this matter, we must consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, *supra* at para 26). In addition, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 provides a list of non-exhaustive factors to consider when imposing sanctions. These factors include:

(1) the seriousness of the allegations;

(2) the respondent's experience in the marketplace;

(3) the level of a respondent's activity in the marketplace;

(4) whether or not there has been a recognition of the seriousness of the improprieties

(5) 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; and

(6) any mitigating factors.

(*Re Belteco Holdings Inc.*, *supra* at 7746)

[42] Additional factors to consider were also set out in *Re M.C.J.C. Holdings Inc.*:

(1) The size of any profit or loss avoided from the illegal conduct;

(2) The size of any financial sanctions or voluntary payment when considering other factors;

(3) The effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(4) The reputation and prestige of the respondent; and

(5) The shame or financial pain that any sanction would reasonably cause to the respondent and the remorse of that respondent.

(*Re M.C.J. Holdings Inc.*, *supra* at para. 26)

(e) Appropriate Sanctions and Costs in this Case

[43] After considering the appropriate factors for imposing sanctions set out in the case-law, we find that in this matter it is appropriate to order the following sanctions:

(1) that pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents permanently cease trading in securities;

(2) that pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to the Respondents;

(3) that pursuant to paragraph 7 of subsection 127(1) of the Act, that Rash and Funt resign from any positions they hold as an officer or director of any issuer;

(4) that pursuant to paragraph 8 of subsection 127(1) of the Act, Rash and Funt be permanently prohibited from becoming or acting as a director of any issuer;

(5) that pursuant to paragraph 10 of subsection 127(1) of the Act, Rash disgorge $1,300,000.00 to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(6) that pursuant to paragraph 10 of subsection 127(1) of the Act, Funt disgorge $1,260,000.00 to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(7) that pursuant to paragraph 9 of subsection 127(1) of the Act, Rash and Funt pay an administrative penalty in the amount of $50,000 each for failure to comply with Ontario securities law, to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(8) that pursuant to paragraph 6 of subsection 127(1) of the Act, Rash and Funt be reprimanded; and

(9) that pursuant to subsection 127.1(1) of the Act, Rash and Funt pay the amount of $38,782.00 towards costs of or related to the hearing incurred by or on behalf of the Commission.

[44] First of all, we considered the amount of money raised by Momentas and the management draws that Rash and Funt received as a result of their activities with Momentas. Our findings regarding financial gains are set out in our decision for the hearing on the merits in this matter. With respect to Momentas, we found:

> […] the evidence shows that *Momentas Corporation raised $7,862,000 from approximately 250 Canadian investors from the sale of its Convertible Debentures* using an in-house sales team whose efforts were devoted strictly to selling securities of Momentas through a cold-call system of telephone solicitation. [Emphasis added] (*Re Momentas Corp.*, *supra* at para. 52)

[45] With respect to the management draws by Rash and Funt, we found:

> […] Rash and Funt received together $2,560,000 as management draws, the direct source of which was the proceeds from the sale of the Convertible Debentures. *Rash received a management draw of $1.3-million and Funt received a management draw of $1.26 million.* [Emphasis added] (*Re Momentas Corp.*, *supra* at para. 59)

[46] It is apparent that in this case investors lost a significant amount of money. For this reason, we find that it is important for Rash and Funt to at least disgorge the management draws they received from the proceeds of the offering of the Convertible Debentures. Accordingly, we order Rash to disgorge $1,300,000.00 and we order Funt to disgorge $1,260,000.00 because the source of these funds came from the proceeds of the offering of the Convertible Debentures.

[47] Rash and Funt can be held accountable to disgorge these management draws, pursuant to section 129.2 of the Act.

[48] In our decision for the hearing on the merits in this matter, we interpreted section 129.2 of the Act, as well as the definition of a "director" and "de facto director/officer" in paragraphs 97 to 112 of the decision. We concluded that section 129.2 of the Act applies to "de facto" officers and directors and we found based on the evidence that both Rash and Funt acted as "de facto" directors and are thus liable for Momentas' breach of the Act (*Re Momentas Corp.*, *supra* at para. 122). On this basis, we find that Rash and Funt must disgorge the amounts received as management draws.

[49] On the issue of holding officers and directors liable, Staff also referred us to case-law regarding the doctrine of "lifting the corporate veil". Since section 129.2 of the Act grants the Commission the statutory authority to hold directors and officers liable we do not find it necessary to address these cases and their applicability to Commission proceedings at this time. Section 129.2 of the Act alone provides the Commission with the authority to find directors and/or officers liable when a company has violated securities law.

[50] In the circumstances, we also find it necessary to impose an administrative penalty of $50,000.00 on both Rash and Funt. Staff provided us with cases regarding appropriate ranges of administrative penalties, such as the *Settlement Between Staff of the Ontario Securities Commission and Robert Griffiths* (2006), 29 O.S.C.B. 9529 (administrative penalty of $150,000.00 imposed), *Settlement Between Staff of the Ontario Securities Commission and John Bennett* (2006), 29 O.S.C.B. 9537 (administrative penalty of $250,000.00 imposed), and *Re Eron Mortgage Corp* (200) LNBCSC 34 (administrative penalty of $100,000.00 imposed). We note that in these three cases, very large administrative penalties were imposed on the respondents. However, in this case we do not find it necessary to impose an administrative penalty such a large sum because Rash and Funt have already been ordered to disgorge $1,300,000.00 and $1,260,000.00 respectively. As a result, we find that imposing an administrative penalty of $50,000.00 on both Rash and Funt is sufficient in the circumstances considering that both Rash and Funt are subject to a large disgorgement sanction.

[51] In determining the appropriate sanctions in this matter, we also considered the importance of deterring not only those involved in this matter, but also like-minded people from engaging in similar conduct. The importance of deterrence was recognized in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672. The Supreme Court stressed that:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence. (*Re Cartaway Resources Corp.*, *supra* at para. 52)

[52] In order to promote both general and specific deterrence we found it necessary to impose severe sanctions including permanent cease trade orders, permanent exclusions from exemptions, and a permanent prohibition from acting as an officer or director of a reporting issuer.

[53] With respect to removing the Respondents from participating in the capital markets by imposing cease trade orders, the Supreme Court has recognized that in some cases it is necessary to remove certain individuals from participating in the capital markets in order to protect the public. It was stated in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("Asbestos"), that:

> […] the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by *removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets* […]. [Emphasis added] (*Asbestos*, *supra* at para. 43)

[54] The passage cited above emphasizes that it is necessary to prohibit certain individuals from participating in the capital markets especially when these individuals have exhibited conduct that breaches securities law and harms investors. In this matter, Rash and Funt committed serious breaches of the Act and their actions harmed the investing public, which is evident from the fact that Momentas raised a total of $7,862,200 from approximately 250 Canadian investors.

[55] As a result of the magnitude of the monetary amounts involved, we find it necessary to remove the Respondents from the capital markets by imposing a permanent cease trade order on them. We also find it necessary to exclude the Respondents permanently from any exemptions under the Act. We also note that the Commission has imposed permanent cease trade orders and permanent exclusion from exemptions in previous cases where it was found that the respondent violating securities law was the "directing mind" behind the conduct at issue (*Re Ochnik*, (2006), 29 O.S.C.B. 3929 at para. 109). Since it was found during the hearing on the merits in this matter that Rash and Funt were the directing minds of Momentas (*Re Momentas Corp.*, *supra* at para. 116), we are of the view that the imposition of permanent cease trade orders and permanent exclusions from exemptions are consistent with sanctions previously imposed by this Commission.

[56] As well, since the conduct of breaching securities law occurred while Rash and Funt acted as "de facto" directors of Momentas, we find that it is also necessary to permanently prohibit Rash and Funt from acting as officers or directors of any issuer. Prohibiting an individual from acting as an officer or director is also an effective sanction because:

> […] the authority to prohibit a person who is engaged in conduct which is abusive of the capital markets from acting as a director, officer or promoter of a reporting issuer, *is a more direct way of ensuring the Commission's primary mandate to protect the public interest and foster confidence and integrity of the capital markets.* [Emphasis added] (*Re Belteco Holdings Inc.*, *supra* at para. 22)

[57] Furthermore, we also find it necessary to reprimand both Rash and Funt for their conduct. As explained in *Re Donnini* (2002), 25 O.S.C.B. 6225, a reprimand serves to "[…] send the message that a respondent's conduct has been unacceptable" (*Re Donnini*, *supra* at para. 216). Since such a significant amount of money was lost by the investing public, we have determined that a reprimand is required to demonstrate that the Commission denounces this type of behaviour that harms the investing public.

[58] The combination of all of the imposed sanctions not only deter the Respondents in this matter from engaging in similar future conduct, but the severity of these sanctions will also deter like-minded individuals from engaging in similar conduct. Deterring future conduct by sending a powerful message with sanctions enables the Commission to carry out its mandate to protect the public from future harm.

[59] With respect to costs, Rash and counsel for Funt did not object to the amounts requested by Staff. We also note that Staff provided a very detailed record of all the costs incurred. The time sheets provided listed the number of hours for each employee working on this file. In addition, the time sheets specified the type of work each employee participated in (i.e. preparing proceeding documents, research and document gathering, correspondence, disclosure, preparing reports …etc.). We find that Staff's disclosure of costs was transparent and allowed the Respondents to test the validity of the costs claim. We also note that when asked about the quantum of costs requested, Rash and counsel for Funt did not take issue with the quantum of $38,782.00.

[60] Further, we find that the amount of costs requested by Staff, in this case was very reasonable. Staff only requested costs for the Litigation and Investigation Counsel assigned to this case. Moreover, Staff only requested costs for the work done in connection with the preparation and attendance at the hearing.

VI. Decision on Sanctions and Costs

[61] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[62] For these reasons, we are of the opinion that it is in the public interest to order:

(1) that pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents permanently cease trading in securities;

(2) that pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to the Respondents;

(3) that pursuant to paragraph 7 of subsection 127(1) of the Act, that Rash and Funt resign from any positions they hold as an officer or director of any issuer;

(4) that pursuant to paragraph 8 of subsection 127(1) of the Act, Rash and Funt be permanently prohibited from becoming or acting as a director of any issuer;

(5) that pursuant to paragraph 10 of subsection 127(1) of the Act, Rash disgorge $1,300,000.00 to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(6) that pursuant to paragraph 10 of subsection 127(1) of the Act, Funt disgorge $1,260,000.00 to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(7) that pursuant to paragraph 9 of subsection 127(1) of the Act, Rash and Funt pay an administrative penalty in the amount of $50,000 each for failure to comply with Ontario securities law, to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

(8) that pursuant to paragraph 6 of subsection 127(1) of the Act, Rash and Funt be and are hereby reprimanded; and

(9) that pursuant to subsection 127.1(1) of the Act, Rash and Funt pay the amount of $38,782.00 towards costs of or related to the hearing incurred by or on behalf of the Commission.

Dated at Toronto, this 12th day of July, 2007.

"Wendell S. Wigle" "Carol S. Perry"

Wendell S. Wigle Carol S. Perry

3.1.2 AiT Advanced Information Technologies Corporation et al.

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

AND

IN THE MATTER OF
AIT ADVANCED INFORMATION TECHNOLOGIES CORPORATION, BERNARD JUDE ASHE AND DEBORAH WEINSTEIN

Hearing:	June 13, 2007		
Panel:	Wendell S. Wigle	-	Commissioner (Chair of the Panel)
	Harold P. Hands	-	Commissioner
	Carol S. Perry	-	Commissioner
Counsel:	Jane Waechter Karen Manarin	-	for Staff of the Ontario Securities Commission
	Alistair Crawley Matthew C. Scott	-	for Deborah Weinstein

DECISION AND REASONS

I. OVERVIEW

[1] Staff of the Ontario Securities Commission ("Staff") bring a motion for directions of the Commission with respect to whether Alistair Crawley and Crawley Meredith LLP, counsel of record for the respondent Deborah L. Weinstein (the "Respondent"), stand in a conflict of interest and should be removed from the record.

[2] Deborah Weinstein is named in a "Notice of Hearing" and "Statement of Allegations", both dated February 12, 2007. The allegations involve a merger transaction (the "Merger Transaction") between AiT Advanced Information Technologies Corporation ("AiT") and 3M Company ("3M"). At the time of the Merger Transaction, the Respondent was one of eight members of the Board of Directors of AiT. Weinstein was also a partner at LaBarge, Weinstein LLP, AiT's legal counsel. Staff allege that "AiT contravened section 75 of the Securities Act, R.S.O. 1990, c. S.5 (the "Act") and engaged in conduct contrary to the public interest by failing to disclose forthwith the Merger Transaction as a material change." Staff also allege that Weinstein and Ashe committed an offence pursuant to section 122(3) of the Act and engaged in conduct contrary to the public interest by authorizing, permitting or acquiescing in AiT's failure to disclose forthwith the Merger Transaction as a material change.

[3] During Staff's investigation of this matter, Mr. Crawley was retained by six non-management members of the Board of Directors (the "Outside Directors") of AiT to provide responses to enforcement notices (the "Enforcement Notices") sent to each director in which Staff outlined facts suggesting that these directors may not have complied with securities law. However, after an exchange of correspondence with Staff, the Outside Directors were advised, in writing on February 28, 2006, that they would not be named as respondents in this matter. The Outside Directors were advised that Staff's decision was based in part because they received legal advice from Deborah Weinstein with respect to disclosure of the Merger Transaction.

[4] After the Notice of Hearing was issued nearly one year later, Mr. Crawley advised Staff that he was counsel of record for Deborah Weinstein.

[5] Staff submit that Mr. Crawley and his law firm, Crawley Meredith LLP, cannot represent the Respondent as some of the Outside Directors, Mr. Crawley's former clients, may be called as witnesses by Staff at the hearing. Staff argue that may give rise to a conflict of interest because Mr. Crawley will be put in the position of cross-examining his former clients.

[6] The Respondent submits that this motion is inappropriate, premature and speculative. The Respondent argues that Staff have failed to identify a conflict of interest in this case, and that Staff should respect Deborah Weinstein's counsel of choice and assume that Mr. Crawley is cognizant of his duties to current and former clients.

II. FACTS

[7] AiT was a reporting issuer in Ontario, located in Ottawa. During the spring of 2002, AiT was involved in discussions and negotiations with 3M regarding a strategic amalgamation between the two companies. On May 23, 2002, AiT and 3M executed a definitive agreement outlining the Merger Transaction. On the same date, AiT issued a press release and subsequently filed a material change report announcing that it had entered into a Merger Transaction with 3M.

[8] At the time of the Merger Transaction, Deborah Weinstein was one of eight directors of AiT. She was also a partner at LaBarge Weinstein LLP, AiT's legal counsel.

[9] During the investigation of the Merger Transaction, Staff sent Enforcement Notices dated June 23, 2004 to all eight members of the Board of Directors of AiT. The letters advised each of the members of the Board of Directors that Staff was of the view that they "authorized, permitted or acquiesced" in AiT's failure to disclose forthwith the Merger Transaction as a material change by April 26, 2002.

[10] In a letter dated July 30, 2004, Alistair Crawley advised Staff that he had been retained by six of the directors of AiT, namely Paul Damp, Graham Macmillan, Stephen Sandler, Allan Churgin, Richard Lesher and Edward Lumley (collectively the Outside Directors), "to prepare a response to the matters raised by Staff in the invitation to provide information." The Respondent retained and was represented by separate counsel at that time.

[11] By letter dated February 15, 2005, Mr. Crawley, on behalf of the Outside Directors, further advised Staff that "the Outside Directors recall that at the April 25, 2002 Board meeting Deborah Weinstein advised that it would be premature to announce a possible transaction with 3M."

[12] After subsequent correspondence between Staff and Mr. Crawley, Staff decided not to name the Outside Directors as respondents. However, by letter dated February 28, 2006, Staff sent a "warning letter" to the Outside Directors. Staff informed the Outside Directors and Mr. Crawley that,

> [i]n making this decision, Staff have taken into consideration the particular circumstances of this matter, including the fact that they [the Outside Directors] have all asserted in their response to Staff's Enforcement Notice that they received legal advice from Deborah Weinstein with respect to the disclosure of the merger transaction.

[13] A Notice of Hearing and Statement of Allegations was issued by the Commission on February 12, 2007, naming AiT, Deborah Weinstein and Bernard Jude Ashe as respondents. AiT and Bernard Jude Ashe entered into Settlement Agreements with Staff, which were approved by the Commission on February 26, 2007.

[14] On February 26, 2007, Staff were advised by Alistair Crawley that he was retained by the Respondent in this matter.

III. ISSUES

[15] This motion raises the following issues:

1. Whether Mr. Crawley and Crawley Meredith LLP stand in a conflict of interest?

2. What order, if any, should the Commission give in the event that it determines that Mr. Crawley and Crawley Meredith LLP stand in a conflict of interest?

IV. POSITION OF THE PARTIES

A) Submissions from Staff

[16] Staff submit that the jurisprudence is clear that counsel cannot cross-examine a former client in respect of the same or related factual scenario that concerns the new retainer. Staff argue that Mr. Crawley's representation of the Outside Directors was on precisely the same facts and issues that are now before the Commission in respect of the Respondent.

[17] Staff rely upon the following fundamental legal principles to argue that Mr. Crawley has a conflict of interest and should therefore be removed as counsel of record:

(a) Counsel has a fiduciary duty to his clients, which includes the duty to put the interest of the client above the interests of anyone else. This fiduciary duty survives the completion of the retainer. (*Re Regina and Speid*, (1983), 8 C.C.C. (3d) 18 (Ont. C.A.), at 22.)

(b) Fiduciary responsibilities include the duty of loyalty, which is focussed on the lawyer's ability to provide proper client representation. The client discloses confidential information to their lawyer, and that confidence is protected by the concept of solicitor-client privilege. Clients disclose information in the belief that nothing they say will be used against them and to the advantage of the adversary. (*MacDonald Estate v. Martin* (1990), 77 D.L.R. (4th) 249 (S.C.C.) ("*MacDonald Estate*"), at 255.)

(c) The duty of loyalty includes the duty to avoid conflicts of interest in representing clients. (*R. v. Neil*, [2002] 3 S.C.R. 631 (S.C.C.), at para. 19.) This duty is not only recognized in the *Rules of Professional Conduct*, but also in the common law. Counsel should examine whether a conflict of interest exists not only from the outset but throughout the duration of the retainer because new circumstances or information may establish or reveal a conflict of interest.

(d) A conflict of interest can occur where counsel previously acted for an individual to whom counsel is now in an adversarial position. An adversarial position may arise when a witness, although not technically a "party" to the hearing, is nonetheless going to be subjected to cross-examination. (*R. v. Edkins*, [2002] N.W.T.J. No. 8 (S.C.) (QL), at para. 11.)

(e) There can be no assurances or undertakings not to use the confidential information. Counsel cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere. There is a risk that the cross-examination of a former client may become less effective or that questions put in cross-examination might cause the former client to believe they came from the previous relationship. (*MacDonald Estate*, *supra* at 268.)

(f) Counsel cannot give his exclusive, undivided attention to the interests of his client if he is torn between his client's interests and those of another client to whom he owes the same duty of loyalty. (*R. v. Neil*, *supra* at para. 26.)

(g) A conflict of interest of one lawyer in a law firm stand as a conflict of interest for any other lawyer in the same law firm unless it is demonstrated that the firm has set up appropriate screening mechanisms. This is so because there is a "strong inference that lawyers who work together share confidences". (*MacDonald Estate*, *supra* at 269.)

(h) The Respondent's right to choose counsel of her choice is not an absolute right. It is subject to reasonable limits. The Respondent cannot choose counsel that has a conflict of interest in circumstances which would ultimately affect the administration of justice. (*Re Regina and Speid*, *supra* at 21.)

(i) The Commission must consider the public interest and the need for public confidence in the administration of justice generally in examining issues of conflict of interest. Public confidence in the administration of justice is undermined by any appearance of impropriety in the conduct of the hearing or any lack of fairness in the cross-examination of a witness. (*R. v. Robillard* (1986), 28 C.C.C.) (3d) 22 (Ont. C.A.), at 27-28.)

(j) Staff's duty is to raise an objection about a potential conflict of interest at the earliest opportunity, well in advance of the hearing, in order to avoid a mistrial. Doing so avoids delays and decreases the likelihood that confidential information will be used improperly. (*R. v. Neil*, *supra* at para. 38.)

[18] Staff anticipate that the evidence at the hearing will be that the Respondent gave advice to the members of the Board of Directors of AiT on the questions which are the subject of the Statement of Allegations, and which the Outside Directors provided answers to during their responses to the Enforcement Notices. Mr. Crawley will therefore be put in the position of having to cross-examine or impeach the credibility of a former client. Staff argue that it is apparent that there may be possibilities for the misuse of confidential information obtained from the Outside Directors, Mr. Crawley's former clients.

[19] As such, Staff submit that they have raised the issue of Mr. Crawley's conflict of interest at the earliest opportunity. Staff raised the issue prior to the pre-hearing conference. Moreover, there is no evidence that the Respondent sought a formal waiver with any the Outside Directors, and there is no indication that the Outside Directors received independent legal advice. Staff argues, therefore, that the Outside Directors have not consented to the Respondent's retainer.

[20] Staff rely on the affidavit filed by Stephanie Collins, a Senior Forensic Accountant in the Enforcement Branch, which indicates that she was advised by Graham Macmillan that it would be "Ms. Weinstein's problem" and that "if the [Outside Directors] needed Alistair Crawley, he would have to represent them."

[21] Finally, Staff submit that the prejudice in this case is minimal since the retainer is relatively recent (shortly after February 12, 2007).

B) Submissions from the Respondent

[22] Mr. Crawley submits that Staff's motion to disqualify him as counsel of record is premature. Staff have not provided any particulars whether they intend to call any of the Outside Directors as witnesses during the hearing. If there is a prospect of prejudice to a witness, it should be for the witness to object, or for the Commission to exercise its jurisdiction to control its own process to prevent any unfairness. Mr. Crawley argues that the Respondent previously discussed her intention to retain Mr. Crawley with the Outside Directors and none of them objected to the retainer.

[23] In addition, Staff have not adduced any evidence of potentially prejudicial confidential information that was imparted from the Outside Directors that could be used against them during the hearing. Mr. Crawley submits that there are other ways in dealing with potential conflict situations that might arise, short of automatic disqualification of counsel (as explained in more detail below). There is no issue at this stage of the proceedings that merits the Commission's intervention.

[24] Mr. Crawley submits that his removal as counsel of record will necessitate a further delay in these proceedings and will adversely affect the Respondent's rights and expectations to have this case proceed within a reasonable time frame.

[25] Applications to have counsel disqualified for conflict of interest should not be initiated except in situations where there is real evidence giving rise to a perception of an unfairness in the proceeding or a real or possible prejudice to the witness. Counsel referred to the *R. v. Stein*, [1996] O.J. No. 5482 (Prov. Ct.) (QL), decision. In that case, the Crown brought an application to disqualify a lawyer acting as counsel for the accused, Stein. The lawyer had represented both Stein and a co-accused before the Crown withdrew the charges against the co-accused and decided to call him as a witness. The Court found that there was no evidence that the testimony of the witness would be opposed in interest to Stein, nor anything to suggest that the lawyer would be required to challenge her credibility. The Court held that the Crown's allegation of conflict was purely speculative, and insufficient to remove Stein's counsel of choice.

[26] Mr. Crawley submits that it is speculative at this point whether any of the Outside Directors would contribute any evidence that is contrary to the Respondent's position. Each of the directors of AiT, including the Outside Directors, made multiple "with prejudice" submissions to Staff in response to the Enforcement Notices in which their recollections of April 25, 2002 Board meeting and the topic of Ms. Weinstein's legal advice were outlined in detail. All of the Outside Directors concur that Ms. Weinstein gave advice to the Board of AiT on April 25, 2002 that it would be premature to disclose the discussions with 3M at that time. Moreover, the Outside Directors, other than Paul Damp, were not directly involved in any of the negotiations with 3M, including the negotiation of the transaction and the due diligence process.

[27] As such, Mr. Crawley submits that the line of criminal authorities relied on by Staff in support of their position are inapplicable to Commission proceedings involving issues of corporate decision-making. Decisions of the boards of directors of corporations are legally, and by their nature, collective decisions. The likelihood that confidential prejudicial information will be used against a witness is greatly diminished from situations where counsel may have been retained by parties who are adverse in interest. In that context, Mr. Crawley submits that joint representation of officers and directors is common place in proceedings before the Commission.

IV. LAW AND ANALYSIS

A) Do Mr. Crawley and Crawley Meredith LLP Stand in a Conflict of Interest?

[28] The issue of conflict of interest is a current and ongoing problem facing practitioners and the courts. We note that the Canadian Bar Association has recently created a task force to attempt to develop practical guidelines to help lawyers with the growing issue of conflict of interest. The Committee is endeavouring to develop a workable approach to conflicts that best serves the interests of the public while preserving the fundamental legal and ethical obligations of the profession.

[29] In *De Perez v. Ontario (Securities Commission)*, [1994] O.J. No. 4502 (Gen. Div.), the court held that the Commission can hear an application for the removal of counsel for conflict of interest. More recently, in *Re Credit Suisse First Boston Canada* (2004), 28 O.S.C.B. 1571 (Ont. Sec. Comm.), the Commission removed counsel of record on the basis that "the nature of the impugned portion of the defence goes to the very root of the matters that Stikeman Elliott was originally retained to advise on".

[30] The solicitor-client relationship is overlaid with certain fiduciary responsibilities, which are imposed as a matter of law. The foundation of this branch of the law is the need to protect public confidence in the legal profession and the integrity of the administration of justice generally. In *R. v. Neil*, Justice Binnie stated the following: "it is of high public importance that public confidence in that integrity be maintained."

(*R. v. Neil*, *supra* at para. 12.)

[31] Fiduciary responsibilities include the duty of loyalty, of which an element is the avoidance of conflicts of interest, as set out in the jurisprudence and reflected in the *Rules of Professional Conduct* of the Law Society of Upper Canada, which govern the practice of law in Ontario. While not legally binding, the *Rules of Professional Conduct* are considered as important statements of public policy which provide helpful guidance on this issue.

[32] In its discussion regarding impartiality and conflict of interest, the Supreme Court in *MacDonald Estate*, quotes the following rule from the Canadian Bar Association Code of Professional Conduct of 1974, which was adopted by the Law Society of Upper Canada:

> The lawyer must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client or prospective client, he should not act or continue to act in a matter when there is or there is likely to be a conflicting interest. A conflicting interest is one which would be likely to affect adversely the judgment of the lawyer on behalf of or his loyalty to a client or prospective client or which the lawyer might be prompted to prefer to interests of a client or prospective client.
>
> (*MacDonald Estate*, *supra* at 256.)

[33] Rule 2.04 of the *Rules of Professional Conduct* is entitled "Avoidance of Conflicts of Interest." It defines a conflict of interest or a conflicting interest as an interest:

> (a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or
>
> (b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

[34] Rule 2.04(3) of the *Rules of Professional Conduct* provides as follows:

> (3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

[35] In *Re Regina and Speid*, the court outlined the competing values the Commission must consider in assessing the merits of a disqualification order:

> The right of an accused to retain counsel of his choice has long been recognized at common law as a fundamental right… However, although it is a fundamental right and one to be zealously protected by the court, it is not an absolute right and is subject to reasonable limitations. It was hoped that these limitations would be well known to the bar, but if not honoured, the court [in this case the Commission] has jurisdiction to remove a solicitor from the record and restrain him from acting.
>
> In assessing the merits of a disqualification order, the court [in this case the Commission] must balance the individual's right to select counsel of his own choice, public policy and the public interest in the administration of justice and basic principles of fundamental fairness. Such an order should not be made unless there are compelling reasons.
>
> (*Re Regina and Speid*, *supra* at 20-21.)

[36] The test for removal of counsel is an objective one. The Commission must determine whether the public, represented by the reasonably informed person, would conclude that the proper administration of justice requires the removal of counsel of record. The two-step test was set out by Sopinka J. in MacDonald Estate as follows:

> Typically, these cases require two questions to be answered: (1) Did the lawyer receive confidential information attributable to a solicitor-and-client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?
>
> (*MacDonald Estate*, *supra* at 267.)

[37] Under the *MacDonald Estate* test, once the client is able to show a sufficient connection between a previous relationship and the new retainer, the court should then infer that confidential information was imparted unless the lawyer can show that this was not the case. The onus on the lawyer to establish that no confidential information was imparted that could be relevant is a "difficult burden to discharge." This onus is described as follows:

> … In my opinion, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a

> difficult burden to discharge. Not only must the court's degree of satisfaction be such that it would withstand the scrutiny of the reasonably informed member of the public that no such information passed, but the burden must be discharged without revealing the specifics of the privileged communication. Nonetheless, I am of the opinion that the door should not be shut completely on a solicitor who wishes to discharge this heavy burden.
>
> The second question is whether the confidential information will be misused. A lawyer who has relevant confidential information cannot act against his client or former client. In such a case the disqualification is automatic. No assurances or undertakings not to use the information will avail. The lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere. Furthermore, there would be a danger that the lawyer would avoid use of information acquired legitimately because it might be perceived to have come from the client. This would prevent the lawyer from adequately representing the new client. Moreover, the former client would feel at a disadvantage. Questions put in cross-examination about personal matters, for example, would create the uneasy feeling that they had their genesis in the previous relationship. [Emphasis added.]
>
> (*MacDonald Estate*, *supra* at 267-68.)

[38] The *MacDonald Estate* rule protecting against disclosure of confidential information is applied as a "bright line" rule. The client's right to confidentiality trumps the lawyer's desire for mobility. In *R. v. Neil*, the Supreme Court stated:

> The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client… unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyers reasonably believes that he or she is able to represent each client without adversely affecting the other.
>
> (*R. v. Neil*, *supra* at para. 29.)

[39] More recently, in *Strother v. 3464920 Canada Inc.*, [2007] S.C.J. No. 24 (S.C.C.) (QL), the Supreme Court confirmed that the impact arising from the new retainer must be "material and adverse." The Court stated that "while it is sufficient to show a possibility (rather than a probability) of adverse impact, the possibility must be more than speculation."

> (*Strother v. 3464920 Canada Inc.*, *supra* at para. 61.)

[40] We agree with the Respondent that her ability to secure the advice of Mr. Crawley as counsel is an important consideration. However, it does not trump the requirement to avoid conflicts of interest. Staff submit that in the course of his retainer with the Outside Directors, Mr. Crawley received confidential information relevant to the central issue that will be argued before the Commission during the hearing – what did the Respondent say to the Outside Directors and Bernard Jude Ashe during the Board meeting of April 25, 2002 with respect to the issue of material change pursuant to section 75 of the Act. While it is recognized in the jurisprudence that conflict of interest concerns arise from possibilities rather than probabilities, there is some evidentiary foundation, according to Staff, upon which a given possibility could be assumed. Staff argue that this possibility alone would support a potential disqualifying conflict of interest. For the reasons set out below, we concur.

[41] The danger of allowing the same counsel to act on a matter where confidential information has been imparted by a former client was highlighted by Sopinka J. in *MacDonald Estate*: "questions put in cross-examination about personal matters, for example, would create the uneasy feeling that they had their genesis in the previous relationship."

> (*MacDonald Estate*, *supra* at 268.)

[42] We repeat that for members of the public to have confidence in the legal profession and the administration of justice generally, "they must know that their confidences will be respected and not used against them in the future for the benefit of another client". (*R. v. Baltovich*, [2003] O.J. No. 2285 (C.A.) (QL), at para. 12.)

[43] In other words, the caveat in *MacDonald Estate* that "the lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere" is particularly problematic in this case, since the same counsel is involved in both retainers. We agree with Staff's submission that "it is inherently adversarial to cross-examine someone." We are mindful in this context that there may exist circumstances for the use, potential for use, or opportunity to use, confidential information secured in the course of the earlier retainer relationship if any the Outside Directors are called as witnesses for Staff. The risk may be very minimal at this stage but it nevertheless exits.

[44] Sopinka J. in *MacDonald Estate* held that an inference should be drawn that confidential information was shared during a previous relationship which is sufficiently related to the retainer unless the court is otherwise satisfied by clear and convincing evidence. There is no evidence before the Commission to rebut the inference that relevant confidential information passed between the Outside Directors and Mr. Crawley.

[45] Accordingly, we do not find that Mr. Crawley and Crawley Meredith LLP have met their heavy burden of proof that they did not receive, and would not use, the relevant confidential information. The Outside Directors cannot be taken to have consented to conflicts of which they are ignorant. The prudent practice for the lawyer, as set out in the jurisprudence, is to obtain informed written consent from the former and current client, preferably with access to independent legal advice. There is nothing in the evidence to suggest that the Outside Directors provided such informed written consent.

[46] The Respondent submits that the Outside Directors are "supportive" of her decision to retain Mr. Crawley and the Outside Directors confirmed their support to Mr. Crawley by email. However, nothing was produced to support this submission in the course of this motion. As a result, we are unable to conclude that the nature and the scope of the consent was broad enough to extend to the possibility of a cross-examination. Only evidence of a clear written consent signed by the Outside Directors would be sufficient to produce such a result.

[47] While the Commission has acknowledged a potential conflict of interest in this case, we have certain specific concerns on the evidence put before us which leads us to ponder whether removing counsel of record is the most appropriate remedy.

[48] First, we do not agree that the evidence elicited by Staff, that it would be "Ms. Weinstein's problem" if the Outside Directors wished to be represented by Mr. Crawley, amounts to a formal objection on behalf of the Outside Directors.

[49] In addition, we question whether any of the Outside Directors will contribute any fresh evidence regarding whether there was a material change pursuant to section 75 of the Act. The Outside Directors (with the exception of Paul Damp) did not participate actively in negotiating the Merger Transaction and were not kept informed on a daily basis of what was transpiring between 3M and AiT. Staff informed us that they did not intend, at the time of the motion, to call Paul Damp as a witness. In short, while the Outside Directors participated in the discussions regarding disclosure, they were not involved in any significant role in connection with negotiation of the Merger Transaction.

[50] In all of the material before us including the affidavit of Weinstein, it does not appear that there is any dispute with respect to the advice given by the Respondent to the Outside Directors and that they relied on this advice. Further, we note that this case raises a number of unique circumstances that can be distinguished from the line of criminal cases provided by Staff, where witnesses were clearly adverse to the lawyer's current client. These circumstances are:

- All of the Outside Directors and Weinstein served on the AiT board together;
- The board decision not to issue disclosure before May 9, 2002 was a collective decision, with no evidence on the record that any members dissented;
- Having been aligned in interest in defending themselves against Staff's allegations, the Outside Directors would not be suddenly adverse in interest merely because they have been subpoenaed to give evidence of their recollections of events and advice received from Weinstein during the Merger Transaction;
- Weinstein does not deny that she gave the advice that the Merger Transaction did not constitute a material change within the meaning of the Act during the relevant time;
- Staff's case does not turn on whether Weinstein gave the advice, it turns on whether the Merger Transaction was a material change at the relevant time, which should have been disclosed on a timely basis; and
- The various stages of the Merger Transaction and the conditions outstanding are well documented on the record and the evidence of the Outside Directors is likely to be corroborative rather than dissenting or adversarial to Weinstein's position.

[51] Given the unique circumstances of this case, we believe it is appropriate for the Commission to consider alternative protective measures, as set out in more detail below.

B) What is the Appropriate Remedy?

[52] Having determined that the Outside Directors were former clients of Mr. Crawley and Crawley Meredith LLP and that counsel to the Respondent stand in a potential conflict of interest, the next issue to be determined is the appropriate order in the circumstances. In *R. v. Neil*, the Supreme Court stated emphatically: "It is one thing to demonstrate a breach of loyalty. It is quite another to arrive at an appropriate remedy".

(*R. v. Neil*, *supra* at para. 36.)

Referring to the objective of reasonable mobility in the legal profession, Justice Binnie in *R. v. Neil* held that it is important to link the duty of loyalty to the policies it is intended to further:

> … An unnecessary expansion of the duty may be as inimical to the proper functioning of the legal system as would its attenuation. The issue is always to determine what rules are sensible and necessary and how best to achieve an appropriate balance among competing interests.
>
> (*R. v. Neil*, *supra* at para. 15.)

[53] The determination of whether counsel should be removed is very much fact specific. (*R. v. Greenwood*, [1995] O.J. No. 387 (Gen. Div.) (QL), at para. 15.) In the course of his oral submissions, Mr. Crawley suggested alternative protective measures that limit the possibility of prejudice to the Outside Directors in the event that one or more of the Outside Directors testify during the hearing. Suggested approaches include:

- Staff may identify which witness they intend to call, and Mr. Crawley may require that witness sign a waiver after obtaining independent legal advice.
- Mr. Crawley may waive his right of cross-examination and undertake that the Respondent will not engage in cross-examining the witness.
- Mr. Crawley may also undertake to call the Outside Directors as witnesses, in order to elicit evidence through an examination-in-chief by asking open-ended and non-leading questions.
- The Respondent may retain independent counsel to cross-examine the Outside Directors should that prove necessary. The Respondent would instruct her independent legal counsel with regards to the cross-examinations. The independent counsel would not communicate with Mr. Crawley and would be available during the days when the Outside Directors are called as witnesses, if indeed they are called.

[54] As we stated above, the Commission has two particular concerns in considering an application for removal of counsel: (1) the public interest in the administration of justice including confidence in the legal profession; and (2) an individual's right to select counsel. In coming to our conclusion, we are satisfied that it is possible to reconcile these concerns.

[55] If both the Respondent and Mr. Crawley undertake in writing to comply with the conditions set out herein, within 15 days from the date of this decision, the Respondent may retain independent counsel to conduct the cross-examination of the Outside Directors and Mr. Crawley may remain as counsel of record.

[56] The conditions are that:

- There shall be no communication between Mr. Crawley and independent counsel with respect to any matter pertaining to the cross-examination of the Outside Directors;
- The independent counsel will not be entitled to consult with Mr. Crawley as to the nature of the evidence or the defence; and
- In the event that any of the Outside Directors are being called by the Respondent to testify as a witness, the Outside Director called shall provide, after having received independent legal advice, a waiver of the right to object to be examined or re-examined at the hearing by Mr. Crawley.

[57] In our opinion, the public represented by the reasonably informed person would be satisfied that no unauthorized disclosure of confidential information would occur if the above conditions are agreed to. The partial disqualification of Mr. Crawley ensures that our remedy is protective of the public interest and the administration of justice, while respecting the Respondent's right to be represented by Crawley as her counsel in all other respects.

[58] The duty of loyalty to a former client is also protected since Mr. Crawley will not be acting against his former clients by undertaking their cross-examination if they are called as witnesses by Staff. There is no longer any risk of misuse of confidential information nor is Mr. Crawley taking an adversarial position against any of the Outside Directors.

[59] The Statement of Allegations dated February 12, 2007 was issued almost five (5) years after the date of the Merger Transaction. The Respondent is entitled, and the Commission should endeavour, to have this hearing dealt with as expeditiously as possible by counsel in whom she has confidence. It is also very much in the public interest that this hearing be heard expeditiously.

[60] While not an absolute right, the right to retain counsel is a right which deserves protection. It should not be taken away unless required by the public interest in the proper administration of justice and the basic principles of fundamental fairness. We are not convinced that requirement has been established in this case. Accordingly, we are satisfied that the compromise solution that allows Mr. Crawley to remain as counsel of record and allows the Respondent to retain independent counsel to

cross-examine any of the Outside Directors, if they are called by Staff as witnesses, is consistent with the public interest and the best interests of the administration of justice.

[61] If the Respondent and Mr. Crawley do not provide the above undertaking in writing within the prescribed time limit, then Mr. Crawley and Crawley Meredith LLP shall be removed as counsel of record for the Respondent.

Dated at Toronto, this 12th day of July, 2007

"Wendell S. Wigle" "Harold P. Hands"

Wendell S. Wigle Harold P. Hands

"Carol S. Perry"

Carol S. Perry

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
Interquest Incorporated	04 Jul 07	16 Jul 07	16 Jul 07	
Simplex Solutions Inc.	04 Jul 07	16 Jul 07	16 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
Fareport Capital Inc.	13 Jul 07	26 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
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		
Fareport Capital Inc.	13 Jul 07	26 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 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
06/22/2007	1	1092743 Alberta Ltd - Preferred Shares	20,000.00	20,000.00
06/22/2007	1	1162184 Alberta Ltd. - Preferred Shares	200,000.00	200,000.00
06/22/2007	1	728867 Alberta Ltd. - Preferred Shares	75,000.00	75,000.00
06/22/2007	1	838389 Alberta Ltd. - Preferred Shares	230,000.00	4,600,000.00
06/22/2007	1	951381 Alberta Ltd. - Preferred Shares	75,000.00	75,000.00
01/17/2006	1	AGFC Capital Trust - Bonds	582,150.00	5,000.00
06/20/2007	4	Algoma Acquisition Corp. - Notes	15,022,000.00	N/A
01/03/2007	2	Alliance & Leicester plc - Notes	40,946,500.00	35,000.00
06/18/2007	4	American Capital Strategies, Ltd. - Common Shares	31,935,332.32	664,000.00
02/23/2007	2	American Railcar Industries, Inc. - Bonds	2,317,000.00	2,000.00
09/15/2006	2	Anadarko Petroleum Corp. - Bonds	10,075,500.00	9,000.00
09/15/2006	2	Anadarko Petroleum Corp. - Bonds	20,151,000.00	18,000.00
06/14/2007	4	Arapahoe Energy Corporation - Debentures	1,550,000.00	N/A
06/20/2007	1	Aspect Medical Systems Inc. - Notes	2,149,800.00	2,000,000.00
12/07/2006	1	AXA Financial, Inc. - Bonds	2,296,200.00	2,000.00
12/11/2006	1	AXA Financial, Inc. - Bonds	6,885,000.00	6,000.00
06/27/2007	10	Balzac Commercial Campus Limited Partnership - Limited Partnership Units	1,520,000.00	19.00
01/24/2007	1	Bank of Queensland Ltd. - Notes	14,188,800.00	12,000.00
06/20/2007	2	Bannerman Resources Limited - Common Shares	7,812,000.00	2,800,000.00
06/21/2007	2	Big Deal Games Inc. - Preferred Shares	799,999.20	380,952.00
06/22/2007	1	Blaze Recycling & Metals LLC/Blaze Finance Corp. - Notes	1,063,400.00	1,000.00
01/07/2007	1	BNG NL - Notes	141,060.00	100.00
09/05/2006	1	Bradford & Bingley PLC - Notes	31,306,000.00	440.00
06/15/2007	64	Caltex Energy Inc. - Common Shares	20,502,664.20	9,168,182.00
06/20/2007	125	Canadian Horizons (Naramata) Limited Partnership - Limited Partnership Units	3,120,700.00	31,207.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/16/2006	1	Canara Bank - Bonds	1,157,800.00	1,000.00
06/21/2007	11	CareVest Blended Mortgage Investment Corporation - Preferred Shares	212,005.00	212,005.00
06/21/2007	23	CareVest First Mortgage Investment Corporation - Preferred Shares	2,088,839.00	2,088,839.00
02/05/2007	1	CenterPoint Energy, Inc. - Bonds	3,245,400.00	3,000.00
07/03/2007	21	Cervus L.P. - Units	5,000,008.00	384,616.00
01/31/2006	1	Chesapeake Energy Corporation - Bonds	571,950.00	500.00
06/22/2007	2	CI Financial Income Fund - Trust Units	106,079,000.00	3,700,000.00
02/24/2006	2	CNH Global N.V. - Bonds	2,172,294.80	1,886.00
06/25/2007 to 06/26/2007	159	Colossus Minerals Inc. - Units	2,020,200.00	5,550,000.00
06/28/2007	2	Columbia Yukon Explorations Inc. - Flow-Through Shares	3,000,000.00	1,500,000.00
11/22/2006	1	Companhia Vale do Rio Doce - Bonds	1,141,300.00	1,000.00
10/12/2006	1	ConocoPhillips Company - Bonds	7,949,900.00	7,000.00
06/28/2007	12	Cooper Pacific II Mortgage Investment Corporation - Common Shares	1,399,500.00	1,399,500.00
06/07/2006	2	Cosipa Commercial Ltd. - Bonds	4,446,400.00	4,000.00
09/08/2006	1	CRH America, Inc. - Bonds	1,119,000.00	1,000.00
09/15/2006	1	CSX Corporation - Bonds	1,119,000.00	1,000.00
03/16/2006	1	Deutsche Telekom AG - Notes	3,461,100.00	3,000.00
06/18/2007 to 06/25/2007	5	Embotics Corporation - Common Shares	225,000.00	22,500.00
05/16/2006	1	European Investment Bank - Bonds	111,120,000.00	100,000.00
06/20/2007	1	Excalibur Limited Partnership - Limited Partnership Units	159,690.00	0.53
06/25/2007	206	Excelsior Energy Limited - Units	35,001,250.00	31,765,000.00
06/29/2007	10	Explor Resources inc. - Common Shares	29,000.00	100,000.00
08/03/2006	1	Ford Motor Credit Corp. - Bonds	1,126,300.00	1,000.00
08/03/2006	1	Ford Motor Credit Corp. - Notes	16,894,500.00	15,000.00
10/05/2006	1	Ford Motor Credit Corp. - Notes	281,725,000.00	250,000.00
06/21/2007	8	Forests Pacific Biochemicals Corporation - Preferred Shares	78,000.00	52,001.00
06/22/2007	1	Fort Nelson 8 Ltd. - Preferred Shares	50,000.00	50,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/21/2007	6	Fortsum Business Solutions Inc./Fortsum d'Affaires inc. - Units	3,500,000.45	6,363,639.00
11/28/2006	20	Gaz Capital SA - Bonds	9,048,800.00	8,000.00
06/13/2006	1	General Electric Capital Corporation - Notes	276,975,000.00	250,000.00
06/22/2007	1	Grande Prairie Motels Ltd. - Preferred Shares	230,000.00	230,000.00
06/22/2007	1	High Level 8 Motel Ltd. - Preferred Shares	120,000.00	120,000.00
06/13/2006	1	Hospitality Properties Trust - Bonds	11,079,000.00	10,000.00
06/19/2007	2	HSBC Finance Corporation - Bonds	33,985,376.16	N/A
11/09/2006	1	Indiana Michigan Power Co. - Bonds	7,904,400.00	7,000.00
07/07/2006	1	International Lease Financing Corp. - Notes	278,350,000.00	250,000.00
06/15/2007	147	Jite Technologies Inc. - Units	10,000,349.80	22,223,000.00
06/28/2007	75	Luna Gold Corp. - Units	5,230,550.05	9,510,091.00
06/25/2007	25	Montero Mining and Exploration Ltd. - Common Shares	1,477,000.00	4,220,000.00
06/25/2007	90	Monument Mining Limited - Units	10,041,500.00	20,083,000.00
04/25/2006	1	Network Rail Infrastructure Limited. - Bonds	28,290,000.00	25,000.00
09/22/2006	1	Network Rail Limited - Bonds	78,204,000.00	70,000.00
06/11/2007	9	N.V. Bank Nederlandse Gemeenten - Bonds	169,799,400.00	300,000,000.00
09/08/2006	2	Oesterreichische Kontrollbank Aktiengesellschaft - Bonds	102,103,200.00	72,000.00
09/08/2006	1	OKO Bank PLC - Notes	14,547,000.00	13,000.00
10/31/2006	1	OPT Bank - Bonds	3,585,000.00	2,500.00
06/22/2007	11	Pebble Creek Mining Ltd. - Units	899,850.00	2,571,000.00
06/22/2007	1	Pele Mountain Resources Inc. - Common Shares	17,000.00	20,000.00
03/28/2007	3	Petaquilla Copper Ltd - Units	4,294,000.00	2,147,000.00
09/29/2006	1	Petrobras International Finance Corporation - Bonds	3,345,900.00	3,000.00
06/14/2007	47	PharmaGap Inc. - Units	450,450.00	3,603,600.00
10/26/2006	1	Plains All American Pipeline LP - Bonds	3,376,200.00	3,000.00
06/18/2007	3	Plato Gold Corp - Units	300,000.00	2,727,271.00
12/08/2006	1	PRICOA Global Funding I - Notes	57,505,000.00	50,000.00
06/20/2007	7	Process Capital Corporation - Common Shares	2,500,000.00	50,000,000.00
06/26/2007 to 07/04/2007	13	Protiva Biotherapeutics Inc. - Loans	2,100,002.20	N/A

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
07/01/2007	1	Renaissance Institutional Equities Fund International L.P. - Limited Partnership Interest	2,855,793.60	N/A
07/25/2006	3	Republic of Columbia - Bonds	9,131,200.00	8,000.00
03/02/2006	1	Republic of Indonesia - Bonds	2,264,400.00	2,000.00
06/15/2007	41	Reservoir Capital Corp. - Units	2,160,000.00	27,000,000.00
06/22/2007	17	Sharon Energy Ltd. - Units	9,000,000.00	22,500,000.00
12/05/2006	1	Simon Property Group, Inc. - Bonds	2,283,400.00	2,000.00
12/05/2006	1	Southern California Edison - Bonds	13,700,400.00	120,000.00
02/16/2006	3	Steinway Musical Instruments Inc. - Bonds	1,960,155.40	1,693.00
05/07/2007	34	Sunshine Oilsands Ltd. - Units	2,502,956.00	2,502,956.00
05/08/2006	1	Swiss Re Capital Markets Corporation - Bonds	11,117,000.00	100,000.00
02/05/2007	1	Textron Financial Corp. - Bonds	2,308,200.00	2,000.00
01/10/2006	4	The Federative Republic of Brazil - Bonds	6,744,240.00	5,800.00
11/05/2006	1	The Federative Republic of Brazil - Bonds	2,435,230.90	2,161.00
08/31/2006	1	The Hershey Company - Bonds	553,300.00	500.00
05/28/2007	1	Trez Capital Corporation - Units	1,347,445.83	1,347,445.83
05/31/2007	1	Trez Capital Corporation - Units	2,405,199.28	2,405,199.28
05/09/2006	1	UBS Preferred Funding Trust - Bonds	551,050.00	500.00
01/24/2007	1	Union Bank of Norway - Bonds	2,326,100.00	1,000.00
06/27/2007	33	Walton AZ Sunland Ranch 2 Investment Corporation - Common Shares	843,420.00	84,342.00
06/27/2007	3	Walton AZ Sunland Ranch Limited Partnership 2 - Limited Partnership Units	1,176,513.03	109,494.00
06/19/2007	74	Walton International Group Inc. - Notes	6,275,000.00	N/A
06/27/2007	1	Weatherly International plc - Common Shares	8,554,400.00	16,882,695.00
06/18/2007	1	Western Troy Capital Resources Inc. - Common Shares	170,190.00	193,398.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Acuity All Cap 30 Canadian Equity Class
Acuity Canadian Equity Class
Acuity Canadian Small Cap Class
Acuity EAFE Equity Fund
Acuity Global Dividend (Currency Neutral) Fund
Acuity Global Dividend Class
Acuity Global Equity (Currency Neutral) Fund
Acuity Global High Income (Currency Neutral) Fund
Acuity High Income Class
Acuity Short Term Income Class
Acuity Natural Resource Class
Acuity Pure Canadian Equity Fund
Alpha Balanced Portfolio
Alpha Global Portfolio
Alpha Growth Portfolio
Alpha Income Portfolio
Alpha Social Values Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses and dated July 11, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
Offering Class A and F Units
Series A and F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Acuity Funds Ltd.
Project #1127684

Issuer Name:
BroadShift Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated July 9, 2007
Mutual Reliance Review System Receipt dated July 11, 2007
Offering Price and Description:
$ * * Common Shares Price: $ * Per Common Share
Underwriter(s) or Distributor(s):
Westwind Partners Inc.
Promoter(s):
M.C. Capital Corp.
1561132 Ontario Ltd.
Ariza Capital Inc.
Project #1127517

Issuer Name:
Drift Lake Resources Inc.
Type and Date:
Preliminary Prospectus dated July 11, 2007
Receipted on July 17, 2007
Offering Price and Description:
$350,000 to $550,000.00 - 3,500,000 to 5,500,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Toll Cross Securities Inc.
Promoter(s):
Luigi M. Falzone
Project #1128921

Issuer Name:
Elliott & Page Core Balanced Fund
Elliott & Page Dividend Fund
Elliott & Page Global Dividend Fund
Elliott & Page Global Monthly Income Fund
Manulife Emerging Markets Fund
Manulife European Opportunites Fund
Manulife Global Leaders Class
Manulife Global Natural Resources Fund
Manulife Global Tactical Fund
Manulife International Large Cap Fund
Manulife Retirement Strategy Fund
Manulife Simplicity Balanced Portfolio
Manulife Simplicity Global Balanced Portfolio
Manulife Simplicity Growth Portfolio
Manulife Simplicity Income Portfolio
Manulife U.S. Small Cap Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated July 17, 2007
Mutual Reliance Review System Receipt dated July 17, 2007
Offering Price and Description:
Advisors Series, Series F, Series I and Series T Securities
Underwriter(s) or Distributor(s):
Elliott & Page Limited
MFC Global Investment Management, a division of Elliott & Page Limited
Promoter(s):
Elliott & Page Limited
Project #1129207

Issuer Name:
First Majestic Silver Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
$34,415,000.00 6,883,000 Common Shares and 3,441,500 Warrants Issuable on Exercise or Deemed Exercise of 6,883,000 Previously Issued Special Warrants
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
CIBC World Markets Inc.
Blackmont Capital Inc.
Promoter(s):
-
Project #1127788

Issuer Name:
Fortune Minerals Limited
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
$25,050,000.00 - 8,350,000 Units Price: $3.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Desjardins Securities Inc.
Canccord Capital Corporation
Promoter(s):
-
Project #1127034

Issuer Name:
HANWEI ENERGY SERVICES CORP.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 11, 2007
Offering Price and Description:
$45,000,000.00 - Price: $5.00 per Special Warrant
Underwriter(s) or Distributor(s):
Cannacord Capital Corporation
GMP Securities L.P.
Research Capital Corporation
Promoter(s):
-
Project #1127670

Issuer Name:
lululemon athletica inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Prospectus dated July 13, 2007
Mutual Reliance Review System Receipt dated July 13, 2007
Offering Price and Description:
US$ * - 16,400,000 Shares of Common Stock Price: US$ * per Share
Underwriter(s) or Distributor(s):
Goldman Sachs Canada Inc.
Merrill Lynch Canada Inc.
Credit Suisse Securities (Canada) Inc.
UBS Securities Canada Inc.
CIBC World Makets Inc.
Promoter(s):
-
Project #1093207

Issuer Name:
Mawer Canadian Balanced Retirement Savings Fund
Mawer Canadian Bond Fund
Mawer Canadian Diversified Investment Fund
Mawer Canadian Equity Fund
Mawer Global Small Cap Fund
Mawer U.S. Equity Fund
Mawer World Investment Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Simplified Prospectuses dated July 12, 2007 and
Amended and Restated Preliminary Simplified Prospectus dated June 29, 2007
(for Mawer Global Small Cap Fund only)
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
Class F Units
Underwriter(s) or Distributor(s):
Mawer Investment Management Ltd.
Promoter(s):
Mawer Investment Management Ltd.
Project #1124367

Issuer Name:
North American Energy Partners Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Short form PREP Prospectus dated July 16, 2007
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
C$* - 15,130,000 Common Shares
Underwriter(s) or Distributor(s):
Credit Suisse Securities (Canada), Inc.
UBS Securities Canada Inc.
CIBC World Markets Inc.
Promoter(s):
-
Project #1125977

Issuer Name:
Petro Uno Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated July 13, 2007
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
$600,000.00 - 3,000,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Emerging Equities Inc.
Promoter(s):
William Ambrose
Jeffrey Ploen
Project #1128557

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated July 12, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
RBC Dominion Securities Inc.
BMO Capital Markets Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Bieber Securities Inc.
Desjardins Securities Inc.
Sora Group Wealth Advisors Inc.
MGI Securities Inc.
Promoter(s):
Sunstone Industrial Advisors Inc.
Project #1128161

Issuer Name:
Rain Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 13, 2007
Offering Price and Description:
OFFERING: $1,600,000.00 (8,000,000 COMMON SHARES) Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Global Securities Corporation
Promoter(s):
Ryan Spong
Project #1128568

Issuer Name:
Verenex Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 12, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
$100,050,000.00 - 6,900,000 Common Shares Price: $14.50 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Haywood Securities Inc.
Canaccord Capital Corporation
Orion Securities Inc.
Promoter(s):
-
Project #1128265

Issuer Name:
Westport Innovations Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 12, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
$51,269,824.00 - 16,538,653 Common Shares Price: $3.10 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
-
Project #1128252

Issuer Name:
Zarlink Semiconductor Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 16, 2007
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
Cdn$ * * Subscription Receipts, each representing the right to receive Cdn$1,000 principal amount of * % Convertible Unsecured Subordinated Debentures Price: Cdn $1,000 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1128797

Issuer Name:
Acuity Clean Environment Global Equity Fund
Acuity Clean Environment Equity Fund
Acuity Clean Environment Balanced Fund
Principal Regulator - Ontario
Type and Date:
Amendment No. 1 dated June 19th, 2007 to the Amended and Restated Simplified Prospectuses and Annual Information Forms dated February 19, 2007, amending and restating the Simplified Prospectuses and Annual Information Forms dated October 18th, 2006
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
Class A and F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Clean Environment Mutual Funds Ltd.
Promoter(s):
Acuity Funds Ltd.
Project #993591

Issuer Name:
Aptilon Corporation
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated July 13, 2007
Mutual Reliance Review System Receipt dated July 13, 2007
Offering Price and Description:
Up to $10,000,000.00 - Up to 25,000,000 Common Shares Price: $0.40 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Loewen, Ondaatje, McCutcheon Limited
Cormark Securities Inc.
Promoter(s):
-
Project #1120240

Issuer Name:
Armadillo Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated July 10, 2007
Mutual Reliance Review System Receipt dated July 17, 2007
Offering Price and Description:
Maximum Offering: $750,000.00 or 5,000,000 shares; Minimum Offering: $600,000.00 or 4,000,000 shares Price: $0.15 per share
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
Malcolm Powell
Project #1117161

Issuer Name:
Calotto Capital Inc
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 10, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
Minimum Offering: $1,000,000.00 (10,000,000 Common Shares) Maximum Offering: $1,780,000.00 (17,800,000 Common Shares) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
Hayward Securities Inc.
Promoter(s):
Dean Gendron
Project #1114820

Issuer Name:
Huntingdon Capital Inc.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated July 13, 2007
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
$8,000,040.00 - 13,333,400 Units ; Price: $0.60 per Unit (each Unit consisting of one Common Share and one Common Share Purchase Warrant)
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Jennings Capital Inc.
Wellington West Capital Inc.
Promoter(s):
Eris Salvatori
Project #1090745

Issuer Name:
Ivory Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 11, 2007
Offering Price and Description:
$28,500,000.00 (Maximum Offering); $25,000,000.00 (Minimum Offering) Up to 28,500 Debenture Units Price: $1,000 per Debenture Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Promoter(s):
Ian E. Gallie
D. Greg Hall
Project #1121713

Issuer Name:
Keystone Diversified Income Portfolio Fund
Keystone Conservative Portfolio Fund
Keystone Balanced Portfolio Fund
Keystone Balanced Growth Portfolio Fund

Principal Regulator - Ontario
Type and Date:
Amendment #2 dated July 9, 2007 to the Simplified Prospectuses and Annual Information Forms dated May 30, 2007
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
Series A, F, G, I, P, T6 and T8 Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1087975

Issuer Name:
Mackenzie Cundill Canadian Security Fund (Series C, F, I, G, O, P, T6 and T8 units)
Mackenzie Ivy Canadian Fund (Series G, P T6 and T8 units and hedged class , Series A, F, I and O units)
Mackenzie Maxxum Dividend Fund (Series A, F, I, O G, P, T6 and T8 units)
Mackenzie Cundill Value Fund (Series C, F, I, G, O, P, T6 and T8 units)
Mackenzie Founders Fund (Series A, F, I, O, P, T6 and T8 units)
Mackenzie Ivy Foreign Equity Fund (Series A, F, I, O, G, P, T6 and T8 units)
Mackenzie Balanced Fund (Series A, F, I, O P, T6 and T8 units)
Mackenzie Cundill Canadian Balanced Fund (Series A, F, I, O C, F, I, G, O, P, T6 and T8 units)
Mackenzie Ivy Growth and Income Fund (Series A, F, I, O G, P, T6 and T8 units)
Mackenzie Maxxum Canadian Balanced Fund (Series A, F, I, O P, T6 and T8 units)
Mackenzie Maxxum Monthly Income Fund (Series A, F, I, O P, T6 and T8 units)
Mackenzie Universal Canadian Balanced Fund (Series A, F, I, O G, P, T6 and T8 units)
Mackenzie Cundill Global Balanced Fund (Series C, F, I, G, O, P, T6 and T8 units)
Mackenzie Ivy Global Balanced Fund (Series A, F, I, O P, T6 and T8 units)
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated July 9, 2007 to the Simplified Prospectuses and Annual Information Forms dated December 7, 2006
Mutual Reliance Review System Receipt dated July 16, 2007
Offering Price and Description:
Offering Series A, C, F, I, G, O, P T6 and T8 Units
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #1007691

Issuer Name:
Sequence 2010 Conservative Portfolio
Sequence 2010 Moderate Portfolio
Sequence 2020 Conservative Portfolio
Sequence 2020 Moderate Portfolio
Sequence 2030 Conservative Portfolio
Sequence 2030 Moderate Portfolio
Sequence 2040 Conservative Portfolio
Sequence 2040 Moderate Portfolio
Sequence Income Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated June 28, 2007
Mutual Reliance Review System Receipt dated July 12, 2007
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #1096188

Issuer Name:
Sereno Capital Corporation
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 11, 2007
Mutual Reliance Review System Receipt dated July 13, 2007
Offering Price and Description:
$300,000.00 - 1,500,000 Common Shares at a price of $0.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Envoy Capital Group Inc.
Project #1107074

Issuer Name:
WORLD OUTFITTERS CORPORATION SAFARI NORDIK
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated July 13, 2007
Mutual Reliance Review System Receipt dated July 17, 2007
Offering Price and Description:
Maximum Offering: $5,000,000.00 or 5,000,000 Units; Minimum Offering: $2,000,000.00 or 2,000,000 Units Price: $1.00 per Unit
Underwriter(s) or Distributor(s):
Laurentian Bank Securities Inc.
Promoter(s):
Nicolas Laurin
Jacques Leclerc
Project #1067637

Issuer Name:
GOLDEN PREDATOR MINES INC.
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Prospectus dated May 14th, 2007
Withdrawn on July 17th, 2007
Offering Price and Description:
$11,000,000.00 - 11,000,000 Units Price: $1.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Cormark Securities Inc.
GMP Securities L.P.
Promoter(s):
-
Project #1101803

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Name	From: Pacific International Securities Inc. To: PI Financial Corp	Broker & Investment Dealer	July 1, 2007
New Registration	Kilburn Ogilvie Investment Management Ltd.	Investment Counsel & Portfolio Manager,	July 11, 2007
Voluntary Surrender of Registration	BWM Investment Counsel Inc.	Investment Counsel & Portfolio Manager	July 12, 2007
New Registration	Sprung LMD Inc.	Limited Market Dealer	July 12, 2007
Change of Category	K2 & Associates Investment Management Inc.	From: Limited Market Dealer To: Limited Market Dealer, Investment Counsel & Portfolio Manager	July 13, 2007
New Registration	Citadel Securities Inc.	Investment Dealer	July 13, 2007
New Registration	Wellington West Total Wealth Management Inc.	Investment Counsel	July 13, 2007

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel issues Decision and Reasons respecting Mary Elizabeth Rygiel Settlement Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES DECISION AND REASONS RESPECTING MARY ELIZABETH RYGIEL SETTLEMENT HEARING

July 11, 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 25, 2007 in respect of Mary Elizabeth Rygiel.

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 161 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 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Unsettled Non-Exchange Trade Report

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

UNSETTLED NON-EXCHANGE TRADE REPORT

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

CDS's current Reporting Procedures offer an Unsettled Non-Exchange Trade Report – Pre-BNS (Report ID: 001951), available daily at the end of each day. The proposed amendments clarify how trades entered on the day for which the report is generated are indicated in the report.

The Procedures marked for the amendments may be accessed on the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments add the following clarification to the report description:

- Non-exchange trades entered on the date for which the report is generated are indicated with an asterisk (*).

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services (3(a)(i)).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768 ; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.3 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Beneficiary Account Number

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

BENEFICIARY ACCOUNT NUMBER

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The *CDSX® Procedures and User Guide* provides for the deposit of Canadian funds into CDS's account at the Bank of Canada. The procedures dictate the use of the MT205 SWIFT® message. The proposed amendment corrects an incomplete Bank of Canada account number. The Bank of Canada is CDS's LVTS banker.

The Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais : http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendment to the *CDSX Procedures and User Guide* appears at page 99, where the Beneficiary Account detail of the MT205 SWIFT message has been updated.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768 ; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.4 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to New Trade Type

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

NEW TRADE TYPE

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments address a request from the CDS Strategic Development Review Committee ("SDRC") Debt & Equity Subcommittee. The SDRC Subcommittee request will improve Participants' ability to track security donation activity. These trades will be reported to CDSX as client trades; the proposed addition of the new trade type will allow Participants to identify specific donation-related transactions for year-end tax-related reporting to Participants' clients. This new trade type is classified as a non-exchange trade for purposes of trading and settlement.

The Procedures marked for the amendments may be accessed on the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments to the CDS User Guide entitled *Trade and Settlement Procedures* will be to include the new trade type – 'DTN" – as a non-exchange trade type at section 1.3. This section lists the available trade types within CDSX and their classification.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services (3(a)(i)).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West, Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768 ; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.5 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Delivery Services

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

DELIVERY SERVICES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments respecting CDS Delivery Services are made subsequent to the implementation of previous amendments to CDS Procedures relating to: 1) The National Securities Clearing Corporation's implementation of Inter-City Envelope Settlement Service screening (CDS implemented these changes on February 9, 2007); 2) The implementation of CDS's OFAC Procedures relating to U.S. Deposits and Withdrawals (CDS implemented these changes on March 26, 2007); and 3) the introduction of the *CDS Delivery Services Participant Procedures* on April 23, 2007.

The Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed housekeeping amendments include grammatical, stylistic, cross-referencing, and consistency corrections to the following documents:

- *CDS Delivery Services Participant Procedures* (grammatical)
- *DTC Direct Link Participant Procedures* (cross-referencing)
- *U.S. Deposit and Withdrawal Procedures* (to ensure consistency with item 2, above)
- *New York Link Participant Procedures* (to ensure consistency with item 2, above)
- *CDSX Procedures and User Guide* (grammatical, cross-referencing, and to ensure consistency with item 2, above)

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they conform to the definitions of technical/housekeeping amendments in subsections 3(a)(iii) to 3(a)(v) of the Rule Protocol (OSC) and the *Protocole d'examen* (AMF).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768 ; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.6 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Claims on Loan Items

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

CLAIMS ON LOAN ITEMS

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

On May 7, 2007, CDS implemented amendments to its procedures relating to the automation of the claims process between a lender and a borrower of an outstanding CDSX® pledge. This process was previously completed manually and involved operations staff resources of both Participants and CDS. The objective of the automation was to ensure systemic consistency and address such claims in a manner substantially similar to the way the CDSX entitlement process handles outstanding trades and the collateral items held in outstanding pledges.

Subsequent to the implementation, Participant lenders expressed concerns with regard to securities that have been 'returned' to the lender as a result of a stock-split event. The existing automated process returns the result of a stock-split (e.g., 2:1 split of 100 shares = 100 shares returned to the lender) to the lender automatically. The concerns expressed relate first to the additional manual processing required to move the split-result securities back to the borrower, and second, to the loss of revenue in the context of a securities lending agreement, the revenue from which is based on the number of shares borrowed. The automation process implemented on May 7, 2007 has raised concerns *only* in this context. In response to the concerns expressed, CDS has undertaken to discontinue the auto-claim process for stock-split events. These events will, upon implementation of the proposed changes to CDS Procedures, be processed manually in the same manner as for other asset-backed security loan items.

The Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments to Chapter 8 of the *CDSX Procedures and User Guide* specify that for certain distribution events, the security loan item is not affected and, further, that a stock-split event falls into the category of an exception scenario which will have to be processed manually by the Participant.

B REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **July 23, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768 ; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.7 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Dutch Auction Tender Report

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

DUTCH AUCTION TENDER REPORT

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments include the addition of a new online request report to CDS's range of currently available reports. The creation of the new report was in response to internal review and was initiated by CDS.

The Procedures marked for the amendments may be accessed on the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments to *CDS Reporting Procedures* include the addition of section 13.6, entitled 'Dutch Auction Tender Report'. This report will be available on request to Depositary Agents in order to provide them with a facility to compile tender details – by price range – automatically. This compilation process is currently completed manually by CDS personnel.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services (3(a)(i)).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West, Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.8 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Automated Pledge Claims Procedures

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

AUTOMATED PLEDGE CLAIMS PROCEDURES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

On May 7, 2007, CDS implemented technical amendments to the Automated Pledge Claims Procedures. Due to an inadvertent omission, however, two items were not listed in the section entitled Exception Scenarios. The proposed amendments include these two items in order to ensure consistency with the process which the CDS Procedures describe.

The Procedures marked for the amendments may be accessed on the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

In the *CDSX Procedures and User Guide*, two clarifications were added:

- Security loan items for certain mandatory events are not processed automatically and are the responsibility of the Participant. (This does not change the *status quo* in respect of processing these claims)
- The treatment of deleted unsettled claims transactions is clarified; the clarification states that a deleted claim appears on the Deleted Transaction report and that the Participant must follow up with the counterparty directly. (This does not change the *status quo* in respect of processing these claims)

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are required to ensure consistency or compliance with an existing rule (3(a)(iii)).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.9 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Issuer Code Warning Report

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

ISSUER CODE WARNING REPORT

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments were made at the request of the CDS Strategic Development Review Committee ("SDRC") Debt & Equity subcommittee. The issue was raised by a Participant who experienced problems when an Issuer Code used to issue Commercial Paper ran out of available ISIN combinations. The SDRC request was to provide a report to Participants which provided a flag when a Participant reached 80% of the available ISIN combinations for a given Issuer Code. A change will also be made to the existing Eligible Issuer Codes report (RMS156) to provide Issuer Agents with a version of the report which identifies only those of their own issuer codes which are within a 20% threshold of the remaining available ISINs. This new report can be used by Participants to monitor the need to request new money market Issuer Codes.

The Procedures marked for the amendments may be accessed on the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en francais: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments to the CDS User Guide entitled *CDS Reporting Procedures* include:

- the addition of an "Issuer Code Warning Report" (Report #000174), which provides details in respect of Issuer Codes and if such Issuer Codes have used more than 80% of their available ISIN numbers in the course of issuance of Money Market instruments.

The proposed amendments to the CDS User Guide entitled *Money Market Issue & Entitlement Procedures* include:

- At section 2.1, the addition of a paragraph outlining how an issuer code will be flagged when only 20% of available ISIN combinations remain for that issuer code.

- At section 3.1, the addition of a paragraph outlining how an issuer code will be flagged when only 20% of available ISIN combinations remain for that issuer code.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services (3(a)(i)).

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **August 13, 2007**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,
Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

13.1.10 Summary of Public Comments respecting Proposed Amendments to Section 19.9 of MFDA By-law No. 1 (Hearing Panels) and Response of the MFDA

SUMMARY OF PUBLIC COMMENTS
RESPECTING PROPOSED AMENDMENTS TO
SECTION 19.9 OF MFDA BY-LAW NO. 1 (HEARING PANELS)
AND
RESPONSE OF THE MFDA

On October 27, 2006, the British Columbia Securities Commission published for public comment proposed amendments to Section 19.9 of MFDA By-law No. 1 – Hearing Panels (the "Proposed Amendments").

The public comment period expired on November 27, 2006.

Two submissions were received during the public comment period:

1. The Investment Funds Institute of Canada ("IFIC"); and
2. Portfolio Strategies Corporation ("Portfolio Strategies").

Copies of the comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario by contacting Ken Woodard, Director, Communications and Membership Services Manager, (416) 943-4602.

The following is a summary of the comments received, together with the MFDA's responses. Unless otherwise indicated, all references are to sections of MFDA By-law No. 1, including the Proposed Amendments.

1. Continuance of Hearing at Chair's Discretion

IFIC commented that the Proposed Amendments do not grant the Chair the express authority to either continue a hearing with two panel members or terminate the hearing where an industry panel member is unable to continue to participate in the hearing. IFIC requested further explanation and clarification as to why the Proposed Amendments make no such provision.

MFDA Response

We have amended the section to clarify this intent.

2. Continuance of Hearing at Respondent's Discretion

Portfolio Strategies expressed the view that the decision to continue a hearing before a two-member panel should be left to the Respondent(s). The concern raised was that the loss of an industry member and his/her expertise may have an adverse effect on the Hearing Panel and ultimately on the Respondent.

MFDA Response

It is a fundamental principle of administrative law that an administrative tribunal has, and should have, inherent jurisdiction to control all aspects of the adjudicative process over which it presides, subject to the requirements of natural justice and fairness and any specific requirements contained in enabling documents. A Hearing Panel therefore has the discretion to choose whether to continue a hearing before a two-member panel, having regard to all of the circumstances of the proceeding, including the submissions of Staff and the Respondent. The interests of the Respondent in the proceeding are only one factor to be considered by the Hearing Panel in making a decision.

3. Procedures Followed in a Tied Decision

IFIC and Portfolio Strategies both raised the question of what procedure would be followed in the event of a tied decision rendered by a two-member Hearing Panel, as the Proposed Amendments do not address such circumstances.

MFDA Response

The procedure to be followed in the event of a tied decision rendered by a two-member hearing panel will be addressed in companion Rules of Procedure to be prescribed by the MFDA. The procedure will depend on the type of tied decision. Where a Hearing Panel is comprised of only two members, any action affirmed by both members shall constitute the decision of the Hearing Panel. Where an agreement concerning any procedural matter or motion cannot be reached, the decision of the Chair shall prevail. Where an agreement concerning the determination of misconduct cannot be reached, any misconduct affirmed by both panel members shall constitute the decision of the Hearing Panel and, where there is no agreement on any

findings of misconduct, the matter shall be deemed dismissed as against the respondent. Where an agreement cannot be reached concerning the penalty to impose with respect to any findings of misconduct agreed upon by the Hearing Panel, the decision of the Chair with respect to penalty shall prevail.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

HEARING PANELS (Section 19.9 of By-law No.1)

19.9 **Hearing Panels**

The authority of a Regional Council under Sections 20 and 24 shall be exercised on its behalf by a Hearing Panel appointed from the members of the Regional Council. Hearing Panels shall be composed of:

(a) three members of the Regional Council: one public representative who will be the Chair of the Hearing Panel, and two industry representatives who may be either elected or appointed members of the Regional Council, but shall not include ex-officio members of the Council; or

(b) two members of the Regional Council: one public representative who will be the Chair of the Hearing Panel, and one industry representative ~~who may be either an elected or appointed member of the Regional Council, but shall not include ex-officio members of the Council, in the event that an industry representative cannot continue to participate in a hearing.~~ in the event that an industry representative in (a) above is unable to continue to serve on a Hearing Panel. The Chair of the Hearing Panel shall decide whether or not to proceed with a two-member Hearing Panel.

Appointments of members to a Hearing Panel shall be made in accordance with the rules of procedures prescribed pursuant to Section 19.12.

13.1.11 MFDA Hearing Panel issues Decision and Reasons respecting John Quigley

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES DECISION
AND REASONS RESPECTING JOHN QUIGLEY

July 17, 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 disciplinary hearing held in Toronto, Ontario on May 28, 2007 in respect of John Quigley.

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 161 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

13.1.12 MFDA Hearing Panel issues Decision and Reasons respecting Robert Michael Smylski

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES DECISION AND REASONS RESPECTING ROBERT MICHAEL SMYLSKI

July 17, 2007 (Toronto, Ontario) – A Hearing Panel of the Prairie 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 Calgary, Alberta on May 22, 2007 in respect of Robert Michael Smylski.

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 161 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

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