DIALOGUE WITH THE OSC 2007

ONTARIO SECURITIES COMMISSION

Tuesday, November 27, 2007

Metro Toronto Convention Centre, North Building

KEYNOTE SPEAKER

David Wilson, Chair, Ontario Securities Commission

GUEST SPEAKERS

Arthur Levitt, Former Chairman, U.S. Securities and Exchange Commission

Linda Chatman Thomsen, Director of Enforcement, U.S. Securities and Exchange Commission

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The Ontario Securities Commission

OSC Bulletin

October 26, 2007

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

OCTOBER 26, 2007

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
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Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

October 26, 2007	**Jose Castaneda**
9:00 a.m.	s. 127 and 127.1
	H. Craig in attendance for Staff
	Panel: WSW/ST
October 26, 2007	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**
10:00 a.m.	s. 127
	M. Mackewn in attendance for Staff
	Panel: RLS/ST
October 31, 2007	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building**
10:00 a.m.	**Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries**
	s. 127 & 127.1
	J. S. Angus in attendance for Staff
	Panel: JEAT/ST
November 5, 2007	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared**
10:00 a.m.	**Taylor, Colin Taylor and 1248136 Ontario Limited**
	s. 127
	E. Cole in attendance for Staff
	Panel: LER/ST/DLK
November 20, 2007	**Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels**
8:30 a.m.	s. 127 and 127.1
	D. Ferris in attendance for Staff
	Panel: JEAT/ST

November 29, 2007 2:30 p.m.	**David Watson, Nathan Rogers, Amy Giles, John Sparrow, 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
November 29, 2007 2:30 p.m.	**Stanton De Freitas** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
December 3, 2007 8:30 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
December 5, 2007 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 H. Craig in attendance for Staff Panel: JEAT
December 10-14, 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: WSW/KJK
December 11, 2007 2:30 p.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 14, 2007 10:00 a.m.	**Saxon Financial Services, Saxon Consultants, Ltd., International Monetary Services, FXBridge Technology, Meisner Corporation, Merchant Capital Markets, S.A., Merchant Capital Markets, MerchantMarx et al** s. 127(1) & (5) S. Horgan in attendance for Staff Panel: JEAT
December 18, 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: RLS/ST
January 7, 2008 10:00 a.m.	***Philip Services Corp. and Robert Waxman** s. 127 K. Manarin/M. Adams in attendance for Staff Panel: JEAT/MCH 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

January 22, 2008 2:30 p.m.	**Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia** s. 127 S. Horgan in attendance for Staff Panel: JEAT
March 31, 2008 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
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
April 7, 2008 2:30 p.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
May 5, 2008 10:00 a.m.	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 & 127.1 I. Smith in attendance for Staff Panel: TBA
May 5, 2008 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: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina 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	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 K. Daniels in attendance for Staff Panel: TBA
TBA	**Shane Suman and Monie Rahman** s. 127 & 127(1) K. Daniels in attendance for Staff Panel: TBA
TBA	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 S. Horgan in attendance for Staff Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

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

1.4 Notices from the Office of the Secretary

1.4.1 Merax Resource Management Ltd. et al.

FOR IMMEDIATE RELEASE
October 17, 2007

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

AND

IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.,
CARRYING ON BUSINESS AS
CROWN CAPITAL PARTNERS,
RICHARD MELLON AND ALEX ELIN

TORONTO – Following a pre-hearing conference held on October 12, 2007 in the above named matter, the Commission issued an Order providing that the hearing scheduled for October 22, 2007 is adjourned to December 12, 2007 to set a new date for a hearing.

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

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1.4.2 Mega-C Power Corporation et al.

FOR IMMEDIATE RELEASE
October 19, 2007

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

AND

IN THE MATTER OF
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED

TORONTO – Following a pre-hearing conference on October 18, 2007, the Commission has ordered a hearing on October 23, 2007 at 3:30 p.m. in the Large Hearing Room to consider a Request for Adjournment by Gary Usling in the above named matter.

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

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1.4.3 Global Partners Capital et al.

FOR IMMEDIATE RELEASE
October 22, 2007

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

AND

IN THE MATTER OF
GLOBAL PARTNERS CAPITAL,
WS NET SOLUTION, INC.,
HAU WAI CHEUNG, CHRISTINE PAN,
GURDIP SINGH GAHUNIA

TORONTO – Further to the Notice of Hearing issued on October 12, 2007 setting the matter down to be heard on October 24, 2007 at 10:00 a.m. to consider whether it is in the public interest for the Commission (1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and (2) to make such further orders as the Commission considers appropriate, please note that the matter will be heard on October 24, 2007 at **1:00 p.m.** in the Large Hearing Room.

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

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1.4.4 The TSX Inc. et al.

FOR IMMEDIATE RELEASE
October 23, 2007

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

AND

IN THE MATTER OF
THE TSX INC.,
MARKET REGULATION SERVICES INC.,
NORTHERN SECURITIES INC., VIC ALBONI
AND CHRISTOPHER SHAULE

TORONTO – The Commission issued its Reasons and Decision today in the above named matter which was heard on July 19, 2007.

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

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1.4.5 Land Banc of Canada Inc. et al.

FOR IMMEDIATE RELEASE
October 24, 2007

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

AND

IN THE MATTER OF
LAND BANC OF CANADA INC.,
LBC MIDLAND I CORPORATION,
FRESNO SECURITIES INC.,
RICHARD JASON DOLAN, MARCO LORENTI
AND STEPHEN ZEFF FREEDMAN

TORONTO – The Commission issued an Order today continuing the Temporary Order of May 17, 2007, until December 3, 2007 against LBC, Midland, Dolan and Lorenti with certain amendments with respect to Dolan and Lorenti.

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Cryptologic Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer is not a reporting issuer.

Applicable Ontario Statutory Provisions

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

October 17, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO AND NOVA SCOTIA
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
CRYPTOLOGIC INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (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 formed on March 7, 1996 through the amalgamation of Biroco Kirkland Mines Limited and Inter.tain.net Inc. and is governed by the *Business Corporations Act* (Ontario).

2. The principal and head office of the Filer is located at 55 St. Clair Avenue West, 3rd Floor Toronto, Ontario M4S 1Y5. The registered office of the Filer is located at Suite 220 Bay Street, Suite 700, Toronto, Ontario M5J 2W4.

3. The authorized capital of the Filer consists of an unlimited number of common shares (the Common Shares). As at the date hereof, 13,902,856 Common Shares are issued and outstanding.

4. The Filer is a reporting issuer in each of the Jurisdictions.

5. Under a plan of arrangement (the Arrangement), which was approved at a special meeting of holders of Common Shares on May 24, 2007 and by the Ontario Superior Court of Justice on May 29, 2007, all of the issued and outstanding Common Shares were acquired indirectly by CryptoLogic Limited, a corporation incorporated under the laws of Guernsey and having its principal place of business at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4, Ireland, in exchange for the issuance of CryptoLogic Limited common shares or exchangeable shares of CryptoLogic Exchange Corporation (CEC). The details of the Arrangement are set out in the Filer's Information Circular dated April 23, 2007.

6. Prior to completing the Arrangement, CryptoLogic Limited incorporated two subsidiaries, namely CryptoLogic Callco ULC (Callco), a Nova Scotia unlimited liability company, on April 13, 2007, and CEC, an Ontario company, on March 30, 2007.

7. Under the Arrangement, which took effect on June 1, 2007, Common Shares held by taxable residents of Canada were exchanged on a one-

for-one basis for exchangeable shares of CEC or for common shares of CryptoLogic Limited, and Common Shares held by non-residents of Canada were exchanged on a one-for-one basis for common shares of CryptoLogic Limited.

8. The terms of the exchangeable shares of CEC, together with a special voting share issued by CryptoLogic Limited, the provisions of a voting and exchange trust agreement among CEC, CryptoLogic Limited and Equity Transfer & Trust Company, and a support agreement among CryptoLogic Limited, Callco and CEC, combine to provide the holders of exchangeable shares of CEC with the economic equivalent of common shares issued by CryptoLogic Limited.

9. As a result of these transactions, all of the outstanding securities of the Filer, 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, and each of CryptoLogic Limited and CEC became a reporting issuer or the equivalent in the Jurisdictions and Prince Edward Island, with continuous disclosure consolidated in the continuous disclosure of CryptoLogic Limited.

10. On May 29, 2007, the Filer received acceptance from the Toronto Stock Exchange to delist the Common Shares and to list the common shares of CryptoLogic Limited and exchangeable shares of CEC. The common shares of CryptoLogic Limited are also listed on the London and NASDAQ stock exchanges.

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

12. The Filer has no current intention to seek public financing by way of an offering of securities.

13. Upon the grant of the Requested Relief, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

14. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation other than its obligation to file interim financial statements, related management's discussion and analysis and certificates under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* for its second quarter ended June 30, 2007. As CryptoLogic Limited was the sole beneficial shareholder of all issued and outstanding Common Shares on the day that the Filer was required to make such filings, the Filer has not prepared or filed such documents.

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.

"Harold P. Hands"
Commissioner

"Suresh Thakrar"
Commissioner

2.1.2 Nu Energy Uranium Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - Issuer is not a reporting issuer under applicable securities laws.

Applicable Legislative Provisions

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

October 17, 2007

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

AND

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

AND

IN THE MATTER OF
NU ENERGY URANIUM CORPORATION
(the "FILER")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be ordered not to be a reporting issuer in the Jurisdictions (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application.

Interpretation

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

Representations

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

1. The Filer is a corporation existing under the laws of British Columbia.

2. The Filer's registered and head office is located at 2 Bloor Street West, Suite 1803, Toronto, Ontario M4W 3E2.

3. The authorized capital of the Filer consists of an unlimited number of common shares (the "Nu Shares"), of which an aggregate of 200 Nu Shares are issued and outstanding and all of which are beneficially owned by Mega Uranium Ltd.("Mega") and there are no other securities, including debt securities, of the Filer outstanding.

4. The Filer is a reporting issuer under the Legislation and under the securities legislation of British Columbia. On August 21, 2007, the Filer filed a notice in British Columbia under BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* stating that it will cease to be a reporting issuer in British Columbia on September 1, 2007 and has received confirmation of this from the British Columbia Securities Commission.

5. Effective August 14, 2007, Nu Energy Uranium Corporation, one of the predecessor entities to the Filer ("Pre-Amalgamation Nu"), and 0794226 B.C. Ltd., a wholly-owned subsidiary of Mega, amalgamated (the "Amalgamation") to form the Filer, which became (and remains) a wholly-owned subsidiary of Mega, and the holders of all of the outstanding common shares of Pre-Amalgamation Nu ("Pre-Amalgamation Shares") received common shares of Mega in exchange.

6. The Amalgamation was approved by holders of the Pre-Amalgamation Shares at a special meeting of shareholders held on August 10, 2007.

7. Prior to the Amalgamation, Pre-Amalgamation Nu was a reporting issuer under the Legislation of the Jurisdictions and the securities legislation of British Columbia for a period of in excess of twelve months. Accordingly, as the continuing entity of Pre-Amalgamation Nu following the Amalgamation, the Filer became a reporting issuer in all such jurisdictions.

8. Prior to the Amalgamation, the Pre-Amalgamation Shares were listed and posted for trading on the TSX Venture Exchange. In connection with the Amalgamation, the Pre-Amalgamation Shares were de-listed from the TSX Venture Exchange on August 13, 2007.

9. As at the date hereof, no securities of the Filer are listed or traded on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*) and the Filer has no current intention to seek public financing by way of an offering of securities.

10. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation, other

than its obligation to file interim financial statements for the six-month period ended June 30, 2007, and related management's discussion and analysis, and certification for such financial statements as required under Multilateral Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings.*

11. Upon the grant of the Requested Relief, the Filer will not be a reporting issuer or equivalent in any jurisdiction in Canada.

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.

"James E.A. Turner"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.1.3 Lakeview Disciplined Leadership Canadian Equity Fund et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Exemptive relief granted to mutual funds allowing extension of distribution beyond lapse date after a recent acquisition.

Applicable Statutory Provisions

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

June 21, 2007

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

AND

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

AND

IN THE MATTER OF
LAKEVIEW DISCIPLINED LEADERSHIP CANADIAN EQUITY FUND, LAKEVIEW DISCIPLINED LEADERSHIP U.S. EQUITY FUND, LAKEVIEW DISCIPLINED LEADERSHIP HIGH INCOME FUND
(the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from Lakeview Asset Management Inc. (the **Manager**), the manager of the Filers, for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption that the time limits pertaining to filing a renewal prospectus of the Filers be extended as if the lapse date of the simplified prospectus and annual information form dated June 22, 2006 of the Funds, as amended from time to time, (collectively, the **Prospectus**) is July 28, 2007 (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

Interpretation

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

Representations

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

1. Each Filer is a reporting issuer (or the equivalent) as defined in the Legislation of each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

2. Each Filer currently distributes its securities in all the Jurisdictions pursuant to the Prospectus.

3. The earliest lapse date of the Prospectus under the Legislation is June 22, 2007.

4. The Manager is a corporation controlled by Rockwater Capital Corporation. On April 5, 2007, Rockwater Capital Corporation was acquired by CI Financial Income Fund through its subsidiary, Canadian International LP.

5. Canadian International LP also controls CI Investments Inc. and United Financial Corporation (collectively, the **CI Managers**). The CI Managers manage, in aggregate, over 100 mutual funds (the **Affiliated Funds**). The Affiliated Funds currently distribute their securities to the public under four simplified prospectuses and annual information forms (the **CI Prospectuses**), each of which have July 28, 2007 as their earliest lapse date under the Legislation.

6. The Affiliated Funds share many common operational and administrative features which simplify the ability of investors to compare the Affiliated Funds and implement switches of investments between the Affiliated Funds.

7. It is the intention of the Manager to adopt operational and administrative features for the Funds which are consistent with the Affiliated Funds in order that investors in the Funds and the Affiliated Funds can more easily compare the features of these mutual funds. However, these changes are extensive and require changes to the back office facilities, information disseminated to financial advisors and prospectus disclosure of the Funds. The Manager currently anticipates that it will require until the end of July, 2007 to implement these changes.

8. As well, it is possible that the CI Managers will make minor changes to various features of the Affiliated Funds as part of the process of renewing the CI Prospectuses. The Manager would like the flexibility to file the renewal prospectus of the Funds on the same timeline as the renewal prospectuses for the Affiliated Funds in order to ensure that the operational and administrative features of the Funds can be made consistent with those of the Affiliated Funds.

9. There have been no material changes in the affairs of any Fund since the filing of the Prospectus, other than those for which amendments have been filed. Accordingly, the Prospectus represents current information regarding each Fund.

10. The Relief will not affect the accuracy of the information in the Prospectus and therefore will not be prejudicial to the public interest.

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.

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

"David L. Knight"
Commissioner
Ontario Securities Commission

2.1.4 AGF Funds Inc., on Behalf of the AGF Group of Funds under its Management - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Variation allowing an extension of sunset clause – original decision granted an exemption from the requirement to calculate net asset value for purposes other than financial statements in accordance with Canadian GAAP following the introduction of Handbook section 3855 – changes to Canadian GAAP would require investment funds to change valuation of certain portfolio securities.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s.144(1).

September 28, 2007

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

AND

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

AND

IN THE MATTER OF
AGF FUNDS INC., ON BEHALF OF THE AGF GROUP OF FUNDS UNDER ITS MANAGEMENT (THE FUNDS) (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, on behalf of the Funds and each investment fund which is now or becomes subject to section 14.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) which is managed by a manager other than the Filer (collectively, the Affected Funds), for a decision under the securities legislation of the Jurisdictions (the Legislation) to vary the decision document issued by the Decision Makers dated September 28, 2006 (the Original Decision).

The Original Decision granted relief from the requirements of section 14.2 of NI 81-106 insofar as it relates to:

- calculating net asset value for any purpose (including for greater certainty, for purchases and redemptions of securities of a mutual fund as required by Parts 9 and 10 of National Instrument 81-102 *Mutual Funds*), other than for purposes of the financial statements, or
- providing the net asset value of each Fund or Affected Fund, or providing information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary (including arranging for publication of net asset value pursuant to subsection 14.2(7) of NI 81-106), other than in the financial statements of the Fund or Affected Fund.

The Original Decision terminates on the earlier of (i) September 30, 2007, or (ii) the date on which changes to Part 14 of NI 81-106 come into effect with respect to calculating net asset value for purposes other than the financial statements and providing net asset value of a Fund or Affected Fund, or information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary.

The variation requested is that termination of the Original Decision be extended to the earlier of (i) September 30, 2008, or (ii) the date on which changes to Part 14 of NI 81-106 come into effect with respect to calculating net asset value for purposes other than the financial statements and providing net asset value of a Fund or Affected Fund, or information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

Interpretation

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

Representations

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

1. The Filer is the manager of the Funds under its management.

2. Each of the existing Funds is a reporting issuer and is subject, amongst others, to the requirements of NI 81-106.

3. Each existing Fund currently calculates its net asset value as required by the Original Decision.

4. Since the date of the Original Decision, extensive submissions and dialogue between the investment funds industry and the staff of the Decision Makers regarding the calculation of net asset value have occurred in a very timely manner.

5. A notice of proposed amendments to certain sections of NI 81-106, including Part 14, consequential amendments and request for comments were published by the CSA on June 1, 2007 (the Proposed Amendments). The Proposed Amendments require the net asset value of an investment fund to be calculated using the fair value of the investment fund's assets and liabilities. The Proposed Amendments require the financial statements of an investment fund to be prepared in accordance with Canadian GAAP.

6. The comment period for the Proposed Amendments ended on August 31, 2007. The Filer expects the CSA to review and consider the comments received, and to determine whether any changes will be made to the Proposed Amendments. The Filer understands that the CSA requires additional time before finalizing the Proposed Amendments and time before final amendments come into effect.

7. The Filer does not believe that allowing the Original Decision to terminate on September 30, 2007 is in the best interests of investors in the Funds. The Filer believes that the Funds should continue to rely on the relief granted in the Original Decision until changes to Part 14 of NI 81-106 come into effect.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers 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"
Interim Director, Investment Funds Branch
Ontario Securities Commission

2.1.5 Total Energy Services Ltd. - s. 1(10)(b)

Headnote

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

Ontario Statutes

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

Citation: Total Energy Services Ltd. , 2007 ABASC 740

October 18, 2007

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary, AB T2P 4K7

Attention: Harinder Basra

Dear Sir:

Re: Total Energy Services Ltd. (the Applicant) - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario, and Québec (the Jurisdictions)

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

Relief requested granted on the 18th day of October, 2007.

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

2.1.6 BetaPro Management Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemption from the requirement that the renewal prospectus of certain exchange traded investment funds in continuous distribution include annual and interim financial statements and certain selected financial information – Relief to incorporate the financial statements by reference into the prospectus – Inclusion of previously publicly disclosed financial information in the renewal prospectus of the pools would not provide any additional disclosure to investors that is not already publicly available on SEDAR.

Applicable Ontario Statutory Provisions

Ontario Securities Commission Rule 41-501 General Prospectus Requirements, ss. 4.1, 4.6, 4.7, 4.8.
Form 41-501F1 – Information Required in a Prospectus.

October 4, 2007

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

AND

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

AND

IN THE MATTER OF
BETAPRO MANAGEMENT INC.

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from BetaPro Management Inc. (the "**Filer**" or the "**Manager**") as the manager of the exchange traded funds (the "**Existing ETFs**" or individually an "**Existing ETF**") and the commodity pools the (the "**Existing Funds**" or individually an "**Existing Fund**") listed on Schedule A (the Existing ETFs and the Existing Funds are together referred to as the "**Existing Pools**" or individually an "**Existing Pool**") and any additional exchange traded funds (the "**Future ETFs**" or individually a "**Future ETF**" and the Future ETFs and the Existing ETFs are together referred to as the "**ETFs**" or individually an "**ETF**") or commodity pools (the "**Future Funds**" or individually a "**Future Fund**" and the Future Funds and the Existing Funds and together referred to as the "**Funds**" or individually a "**Fund**") which

the Manager may establish in the future and which are operated on a similar basis as the Existing Pools (the Future ETFs and the Future Funds are together referred to as the "Future Pools" and the Future Pools are together with each Existing Pool referred to as the "**Pools**" or individually a "**Pool**") for a decision under the securities legislation (the "**Legislation**") of the Jurisdictions providing an exemption (the "**Requested Relief**") for each Pool from the requirements in the Legislation that the renewal prospectus of each Pool include:

1. the annual financial statements of that Pool;

2. the interim financial statements of that Pool; and

3. the auditor's report on the annual financial statements of that Pool.

(collectively, the "**Prospectus Financial Disclosure Requirements**")

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

1. the Ontario Securities Commission (the "**OSC**") is the principal regulator for this application; and

2. this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**") have the same meaning in this decision unless they are defined in this decision.

Representations

This MRRS decision document is based on the following facts represented by the Filer, the trustee and manager of each Pool:

1. Each Pool is, or will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer in each Jurisdiction.

2. Each Pool is, or will be, a commodity pool as such term is defined in section 1.1 of National Instrument 81-104 *Commodity Pools* ("**NI 81-104**"), in that each Pool has adopted or will adopt fundamental investment objectives that permit that Pool to use or invest in specified derivatives in a manner that is not permitted under National Instrument 81-102 *Mutual Funds* ("**NI 81-102**").

3. Each Pool is, or will be, subject to NI 81-102, subject to the exceptions relating to commodity pools, as such exceptions are outlined in NI 81-104.

4. Each Pool is, or will be, subject to NI 81-106 and each Pool is, or will be, subject to other rules applicable to mutual funds, including National Instrument 81-107 – *Independent Review Committee for Investment Funds*.

5. The Existing Funds are qualified for distribution pursuant to a prospectus dated September 28, 2006. A pro forma prospectus dated August 29, 2007 has been filed in respect of the fourteen Existing Funds with the securities regulatory authorities in each of the Jurisdictions.

6. The eight Existing ETFs are qualified for distribution pursuant to prospectuses dated January 5, 2007 and June 7, 2007.

7. Securities of each ETF are, or will be, listed on the Toronto Stock Exchange or another stock exchange recognized by the OSC.

8. Each Pool's investment objective will be to provide daily results, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to a multiple or the inverse (opposite) multiple of the daily performance of an index, security, currency or commodity.

9. In order to achieve its investment objective, each Pool will invest in equity securities and/or other financial instruments, including derivatives.

10. JovInvestment Management Inc. ("**JovInvestment**"), a corporation incorporated under the laws of Ontario, acts, or will act, as the investment manager of each Pool. JovInvestment is registered in the categories of investment counsel and portfolio manager under the *Securities Act* (Ontario) (the ("**OSA**") and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

11. JovInvestment has retained, or will retain, ProShare Advisors LLC ("**ProShare**"), a limited liability company organized under the laws of the state of Maryland, or an affiliate of ProShare, to act as a sub-adviser on behalf of each ETF to make and execute investment decisions on behalf of each ETF. ProShare is registered as an investment advisor with the U.S. Securities and Exchange Commission and is exempt from registration as a commodity pool operator and commodity trading advisor.

12. JovInvestment has retained, or will retain, ProFund Advisors LLC ("**ProFund**"), a limited liability company organized under the laws of the state of Maryland, or an affiliate of ProFund, to act as a sub-adviser on behalf of each Fund to make and execute investment decisions on behalf of each Fund. ProFund is registered as an investment advisor with the U.S. Securities and

Exchange Commission and is exempt from registration as a commodity pool operator and commodity trading advisor.

13. Securities of each Pool are, or will be, offered on a continuous basis in each Jurisdiction. Each Pool must therefore file a renewal prospectus on an annual basis in each Jurisdiction in accordance with Section 62 of the OSA and similar provisions in force in the other Jurisdictions.

14. Section 1.3(b) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* ("**NI 81-101**") provides that NI 81-101 does not apply to commodity pools. As each Pool is a commodity pool, in qualifying and offering its securities for distribution, the Pools can not therefore rely on the form of simplified prospectus described at section 2.1 of NI 81-101 (the "**Simplified Prospectus Form**"). Rather, each Pool offers, or will offer, its securities by way of a long form prospectus prescribed by the Legislation (each a "**Long Form Prospectus**").

15. Section 3.1 of NI 81-101 permits an issuer to incorporate by reference financial and other information relating to such issuer.

16. Financial information of an issuer can not be incorporated by reference into a Long Form Prospectus. As a result, absent the Requested Relief, the Pools can not incorporate by reference the financial information required by the Prospectus Financial Disclosure Requirements into the renewal prospectus by which its securities are, or will be, offered.

17. The initial prospectuses of the Existing Pools included audited opening statements of net assets relating to such Existing Pools.

18. The initial prospectuses of the Future Pools will each include audited opening statements of net assets of such Future Pools.

19. Each Pool intends to comply with the filing requirements in respect of financial statements required by NI 81-106 (the "**Investment Fund Financial Disclosure Requirements**"). All financial disclosure prepared in accordance with the Investment Fund Financial Disclosure Requirements is, and will be, publicly available for examination by existing and potential unitholders of the Pools on the system for electronic document analysis and retrieval ("**SEDAR**") and on the Internet at www.hbpfunds.com and www.hbpetfs.com.

20. By complying with the Investment Fund Financial Disclosure Requirements, the Pools will have filed on SEDAR or publicly disseminated (in respect of quarterly portfolio disclosure) all relevant financial information for all periods that would, absent the Requested Relief, be reflected in the financial disclosure that would otherwise be required to be included as part of the renewal prospectuses of the Pools pursuant to the Prospectus Financial Disclosure Requirements.

21. The Filer expects that, in the absence of the Requested Relief, a significant quantity of previously disclosed financial information will be required to be included in renewal prospectuses of the Pools. As noted in representations 5 and 6, there are currently fourteen Existing Funds and eight Existing ETFs. Further, the quantity of previously disclosed financial information in the renewal prospectuses of the Pools will continue to increase as Future Pools are added. The Filer and the Pools would be required to allocate a significant amount of resources in preparing and including this large volume of financial information in the renewal prospectuses. This financial information would not provide any additional disclosure to investors that would not already be publicly available. Rather, this financial information would make the renewal prospectus of the Pools unnecessarily lengthy and cumbersome, and likely less "user friendly" for investors.

22. Given that the statements and information required by the Investment Fund Financial Disclosure Requirements will be publicly available on SEDAR, the Filer believes that there is no prejudice to investors by granting the Requested Relief. Furthermore, the Requested Relief will allow the Pools to provide the same level of financial disclosure in each renewal prospectus relating to a Pool as that of other mutual funds in continuous distribution that distribute securities using the Simplified Prospectus Form. The Pools will therefore be treated equally with other such mutual funds.

Decision

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

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

1. The initial prospectus of each Future Pool includes an audited opening statement of net assets of that Future Pool.

2. As of the date of the renewal prospectus of a Pool, the Pool has complied with the Investment Fund Financial Disclosure Requirements for all financial periods that would, absent the Requested Relief, otherwise be included in the renewal prospectus of the Pool.

3. The renewal prospectus of a Pool, by means of disclosure on the cover page and in the body of the prospectus, incorporates by reference the following:

   (a) the most recently filed comparative annual financial statements of the Pool, together with the accompanying report of the auditor, filed either before or after the date of such prospectus; and

   (b) the most recently filed interim financial statements of the Pool that pertain to a period after the period to which the annual financial statements then incorporated by reference in the prospectus pertain and that were filed either before or after the date of such prospectus.

4. The disclosure in the body of the prospectus referred to in paragraph 3 above, includes the following statement in substantially the following words and the disclosure on the cover page of the prospectus referred to in paragraph 3 above includes the following statement or an abbreviated version of the following statement with a cross-reference to the disclosure in the body:

   "Additional information about the Pool is available in the following documents:

   - the most recently filed annual financial statements [may specify the date of the annual financial statements, if appropriate];

   - any interim financial statements filed after those annual financial statements [may specify the date of the interim financial statements, if appropriate].

   These documents are incorporated by reference into this prospectus, which means that they legally form part of this document just as if they were printed as part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted] or from your dealer.

   [If applicable] These documents are available on the [Pool's/Pool family's] Internet site at [insert Pool's Internet site address], or by contacting the [Pool/Pool family] at [Pool's/Pool family's email address].

   These documents and other information about the Pool are available on the Internet at www.sedar.com.".

5. An auditor's consent to the incorporation of the auditor's report on the comparative annual financial statements referred to under paragraph 3(a) above into the prospectus of a Pool is filed with such prospectus and filed with any subsequently filed comparative annual financial statements.

6. The certificate of a Pool that is required to be included in the renewal prospectus of such Pool pursuant to the Legislation states the following:

   "To the best of our knowledge, information and belief, this prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert the following additional language if offering made in Québec] For the purpose of the Province of Québec, to our knowledge, this prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."

7. The renewal prospectus of each Pool discloses that the Pool has received exemptive relief in the Jurisdictions to permit the Pool, subject to certain terms and conditions, to incorporate certain publicly disclosed financial statements and information by reference into such renewal prospectus instead of including such financial statements and information in such renewal prospectus.

8. This decision expires upon the coming into force of a prospectus rule that replaces Ontario Securities Commission Rule 41-501 - *General Prospectus Requirements* ("**Rule 41-501**") or Ontario Securities Commission Rule 41-502 *Prospectus Requirements for Mutual Funds* ("**Rule 41-502**") or that varies Rule 41-501 or Rule 41-502 in a manner such that the Prospectus Financial Disclosure Requirements no longer apply.

"Leslie Byberg"
Interim Director, Investment Funds Branch

SCHEDULE A

EXISTING POOLS

BetaPro ETFs

Horizons BetaPro S&P/TSX 60 Bull Plus ETF
Horizons BetaPro S&P/TSX 60 Bear Plus ETF
Horizons BetaPro S&P/TSX Capped Financials Sector Bull Plus ETF
Horizons BetaPro S&P/TSX Capped Financials Sector Bear Plus ETF
Horizons BetaPro S&P/TSX Capped Energy Sector Bull Plus ETF
Horizons BetaPro S&P/TSX Capped Energy Sector Bear Plus ETF
Horizons BetaPro S&P/TSX Global Gold Sector Bull Plus ETF
Horizons BetaPro S&P/TSX Global Gold Sector Bear Plus ETF

BetaPro Funds

Horizons BetaPro S&P/TSX 60® Bull Plus Fund
Horizons BetaPro S&P/TSX 60® Bear Plus Fund
Horizons BetaPro NASDAQ-100® Bull Plus Fund
Horizons BetaPro NASDAQ-100® Bear Plus Fund
Horizons BetaPro Canadian Bond Bull Plus Fund
Horizons BetaPro Canadian Bond Bear Plus Fund
Horizons BetaPro U.S. Dollar Bull Plus Fund
Horizons BetaPro U.S. Dollar Bear Plus Fund
Horizons BetaPro Crude Oil Bull Plus Fund
Horizons BetaPro Crude Oil Bear Plus Fund
Horizons BetaPro S&P 500® Bull Plus Fund
Horizons BetaPro S&P 500® Bear Plus Fund
Horizons BetaPro Gold Bull Plus Fund
Horizons BetaPro Gold Bear Plus Fund

2.1.7 Mackenzie Financial Corporation and Mackenzie GPS Allocation Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemptive relief granted to a mutual fund allowing a 30-day extension of the prospectus lapse date – Extension of lapse date granted to facilitate consolidation of mutual fund's prospectus with prospectus of other mutual funds under common management – Securities Act (Ontario)

Applicable Ontario Statutory Provisions

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

October 19, 2007

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

AND

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

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
(the "Filer")
AND
MACKENZIE GPS ALLOCATION FUND
(the "Fund")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the time limits for the renewal of the simplified prospectus of the Fund dated October 26, 2006 (the "**Prospectus**") be extended to those time limits that would be applicable if the lapse date of the Prospectus was November 25, 2007 (the "**Requested Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

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

Interpretation

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

Representations

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

(a) The Filer is the manager of the Fund.

(b) The Fund is a "money market fund" as defined in National Instrument 81-102 *Mutual Funds*.

(c) The Fund is currently qualified for distribution in all of the provinces and territories of Canada under the Prospectus which lapses on October 26, 2007.

(d) The Fund is a reporting issuer under the Legislation. The Fund is not in default of any of the requirements of the Legislation.

(e) The Filer is also the manager of the Mackenzie Capital Class Funds (the "**Other Funds**") offered under a prospectus whose lapse date is November 6, 2007.

(f) In order to reduce the cost of renewing the Prospectus for the Fund and reduce on-going printing and related costs, the Filer wishes to combine the Prospectus for the Fund with the prospectus of the Other Funds.

(g) If the Requested Relief was not granted it would be necessary to renew the Prospectus twice within a short period of time in order to consolidate the Prospectus with the prospectus of the Other Funds.

(h) Since October 26, 2006, the date of the Prospectus, apart from amendments that have been made to the Prospectus, no undisclosed material change has occurred. Accordingly, the Prospectus, as amended, provides accurate information regarding the Fund. The extension requested will not affect the currency or accuracy of the information contained in the Prospectus, as amended, and accordingly, will not be prejudicial to the public interest.

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.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.8 Mackenzie Financial Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – s. 19.1 of National Instrument 81-102 Mutual Funds – exemption from section 2.7 (1)(a) of NI 81-102 to permit interest rate and credit derivative swaps and, for hedging purposes, currency swaps and forwards with a remaining term to maturity of greater than 3 years; exemption from section 2.8(1) of NI 81-102 to the extent that cash cover is required in respect of specified derivatives to permit the Funds to cover specified derivative positions with: certain bonds, debentures, notes or other evidences of indebtedness, floating rate notes and securities of money market funds.

Applicable Legislative Provisions

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

September 25, 2007

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

AND

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

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
("Mackenzie")

MRRS DECISION DOCUMENT

BACKGROUND

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application (the "Application") from Mackenzie, on behalf of the funds that Mackenzie manages together with all future mutual funds managed by Mackenzie other than money market funds (collectively, the "Funds"), for a decision under the securities legislation of the Jurisdictions (the "Legislation") granting exemptions pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (NI 81-102):

1. from the requirement in section 2.7(1)(a) of NI 81-102, insofar as it requires a swap or forward contract to have a remaining term to maturity of 3 years or less (or 5 years or less in certain circumstances), to permit the Funds to enter into interest rate swaps or credit default swaps or, if the transaction is for hedging purposes, currency forwards, in all cases with a remaining term to maturity of greater than 3 years; and

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

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

   (b) floating rate evidences of indebtedness; or

   (c) securities of money market funds managed by Mackenzie ("Mackenzie Money Market Funds")

   (collectively, the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

INTERPRETATION

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

REPRESENTATIONS

This decision is based on the following facts represented by the Mackenzie and the Funds:

Background

1. Mackenzie is a corporation amalgamated under the laws of Ontario and is registered as an advisor in the categories of investment counsel and portfolio manager in Ontario, Manitoba and Alberta. Mackenzie is also registered in Ontario as a dealer in the category of Limited Market Dealer, as well as registered under the *Commodity Futures Act* (Ontario) in the categories of Commodity Trading Counsel & Commodity Trading Manager. Mackenzie is or will be the manager of the Funds. Mackenzie's head office is in Toronto, Ontario.

2. The Funds are or will be mutual fund trusts or classes of corporations established under the laws of Ontario. The portfolio advisor is or will be either Mackenzie or another entity appointed by Mackenzie as portfolio advisor or portfolio sub-advisor. The Funds are or will be offered by prospectus in all the Jurisdictions. The Funds are or will be reporting issuers under the securities laws of some or all of the provinces and territories of Canada.

3. Nearly all of the Funds are or will be permitted to use derivative instruments (such as options, futures, forward contracts, swaps or customized derivatives). Any Fund that is not currently permitted to commence the use of derivatives will only do so in accordance with section 2.11 of NI 81-102.

4. The Funds that are or will be permitted to use derivatives can use derivatives to reduce risk by hedging against losses caused by changes in securities prices, interest rates, exchange rates and/or other risks. The Funds may also use specified derivatives for non-hedging purposes under their investment strategies in order to invest indirectly in securities or financial markets or to gain exposure to other currencies, provided the use of derivatives is consistent with the Fund's investment objectives. When specified derivatives are used for non-hedging purposes, the Funds are subject to the cash cover requirements of NI 81-102.

5. In all cases where the Funds may use derivatives, hedging of risks is permitted, including currency risks, whether the currency risk relates to income or equity securities or otherwise.

Interest Rate Swaps, Credit Default Swaps and Currency Forwards for Hedging Purposes

6. Section 2.7(1)(a) of NI 81-102 prohibits mutual funds from entering into certain over-the-counter derivatives transactions, with terms to maturity of greater than 3 years, or greater than 5 years if the contract provides the fund with a right to eliminate its exposure within 3 years. Mackenzie seeks the ability to enter into, on behalf of the Funds, interest rate swaps and credit default swaps or, if the transaction is for hedging purposes, currency forwards, without a restriction as to term of the swap or forward.

7. To a large extent, traditional mutual fund investing is about managing risks prudently to obtain commensurate returns. For fixed income investments, such risks include but are not limited to interest rate risk, credit risk and currency risk. These risks can be controlled or mitigated through the use of over-the-counter ("OTC") derivatives. Interest rate risk may be managed by interest rate swaps, credit risk is managed by credit default swaps and currency risk by currency forwards.

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

9. Credit default swaps ("CDS") have a similar risk profile to their reference entity (corporate or sovereign bonds), or in the case of an index of credit default swaps (such as CDX), to an average of all the reference entities in the CDX index. The term of a credit default swap imparts credit risk similar to that of a bond of the reference entity with the same term. The Funds may not be able to achieve the same sensitivity to the credit risk of a specific reference entity or their respective benchmarks by using credit default swaps with a maximum term of 3 years because the reference entity or relevant benchmark may have an average term that is longer. There is no term restriction in NI 81-102 when investing directly in the reference entities (corporate or sovereign bonds).

10. A currency forward used for hedging purposes may or may not have a contract term and maturity that equals the maturity of the underlying interest. For example, if a 10-year bond is denominated in U.S. dollars, under the current provisions of NI 81-102, the term of the currency forward can be at most 5 years whereas the term of the underlying interest is 10 years. Ideally to manage the currency risk, a fund must enter into two consecutive 5-year currency forwards. However, the pricing for the currency forward in respect of the second 5 year period is not known at the time the U.S. dollar bond is purchased but only 5 years hence. Consequently, the inability to enter into a 10-year currency forward transaction indirectly introduces currency risk when a hedged 10-year position was the desired outcome. Accordingly, whenever the term of the bond is longer than 5 years, the current provisions of NI 81-102 may unintentionally expose a fund to currency risk. This has become a very relevant issue given that there are no longer foreign investment restrictions under the *Income Tax Act* (Canada).

11. It is also not a market convention to have a transaction with a 5-year term (subject to a right to eliminate the exposure within 3 years) as required by NI 81-102 and, as a result, from time to time, this off-market feature may subject a fund to less efficient pricing.

12. The interest rate swap market, credit default swap markets and currency forward markets are very large and liquid.

13. The interest rate swap market is generally as liquid as government bonds and more liquid than corporate bonds. The Bank for International Settlements reported that the notional amount of interest rate swaps outstanding was U.S. $172.8 trillion as of December 31, 2005 (U.S. $207.3 trillion as of June 30, 2006). In Canada, there were over U.S. $1.5 trillion of interest rate swaps outstanding as of December 31, 2005, greater than the sum of all outstanding federal and provincial debt.

14. Credit default swaps, on average, are highly liquid instruments. Single name CDS are slightly less liquid than the bonds of their reference entities, while CDS on CDX are generally more liquid, than corporate or emerging market bonds. The Bank for International Settlements reported that the notional amount of credit default swaps outstanding was U.S. $20.3 trillion as of June 30, 2006. The International Swap and Derivatives Association's 2006 mid-year market survey estimated the notional amount outstanding to be U.S. $26.0 trillion. Using either source, the credit default swap market has surpassed the size of the equity derivatives markets, and is one of the fastest growing financial markets.

15. With respect to foreign exchange, the Bank for International Settlements reported that the notional amount of outright forwards and foreign exchange swaps outstanding was U.S. $19.4 trillion as at June 30, 2006. For comparative purposes, the S & P 500 had an approximate market capitalization of U.S. $11.7 trillion on such date. The Bank for International Settlements also reported that the average daily turnover of OTC foreign exchange was U.S. $1,292 billion during April, 2004. The average daily turnover of outright forwards and foreign exchange swaps totaled U.S. $1,152 billion during such period. For comparative purposes, the daily trading during May 2007 was in the case of the New York Stock Exchange approximately U.S. $82.2 billion and in the case of the Toronto Stock Exchange approximately CAD $7.1 billion. Daily trading is many times larger for currencies and currency forwards than for well-known equity exchanges.

16. Because swap and forward contracts are private agreements between two counterparties, a secondary market for the agreements would be a cumbersome process whereby one counterparty would have to find a new counterparty willing to take over its contract at a fair market price, get the original counterparty to approve the new counterparty, and exchange a whole new set of documents. To avoid that process, market participants can unwind their positions in interest rate swaps and currency forwards by simply entering into an opposing swap with an acceptable counterparty at market value. In this way, the original economic position of the initial swap or forward is offset. In the case of CDS, Mackenzie would trade with the original counterparty, which has the effect of cancelling the CDS at current prices, or trade with another counterparty by assigning the swap to the other counterparty. Should one of the two remaining parties in the contract default, there would be no recourse back to the Funds.

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

18. Potential credit exposure to a counterparty on a credit default swap on a CDX is equal to the notional exposure to any issuer in the index who has defaulted, or in the case of a single name CDS, equal to the full notional exposure. The Bank for International Settlements reported that, as at June 30, 2006, that the "gross market value" of credit default swaps was approximately 1.4% of the notional amount. The Bank for International Settlements states that "gross market value" is defined as the sums of all absolute values of all open contracts with either a positive or negative replacement value evaluated at prevailing market prices. This essentially is a proxy for the sum of all counterparty exposures. Such approach is a conservative measurement since the figure is compiled without netting of positions between counterparties, which in practice would be common. As is the case with interest rate swaps, this exposure is mitigated because the counterparty will be required to have an approved credit rating prescribed by NI 81-102 and exposure to any individual counterparty is limited by NI 81-102.

19. Like interest rate swaps and credit default swaps, credit risk exposure to a counterparty is only a small fraction of the underlying notional exposure of a currency forward. The Bank for International Settlements reported that, as at June 30, 2006, the "gross market value" of outright forwards and foreign exchange swaps was approximately 2.2% of the notional amount.

20. By permitting the Funds to enter into swaps beyond 3-year terms, it increases the possibility for the Funds to increase returns due to the fact that the opportunity set is expanded and to target exposures that might not otherwise be available in the cash bond markets or could not be achieved as efficiently as in the cash bond markets. Further, the use of swaps and forwards beyond 3-year

terms enables the Funds to effect hedging transactions that are more efficient and tailored that help mitigate underlying investment risks.

21. Mackenzie has and/or will have the right to terminate the swap or forward early if a counterparty's credit rating drops below the credit ratings established by NI 81-102. In the case of an NI 81-102 fund, Mackenzie will do so in accordance with the requirements of section 2.7 of NI 81-102 and the definition of approved credit rating in NI 81-102.

Cash Cover

22. The purpose of the cash cover requirement in NI 81-102 is to prohibit a mutual fund from leveraging its assets when using certain specified derivatives and to ensure that the mutual fund is in a position to meet its obligations on the settlement date. This is evident from the definition of "cash cover", which is defined as certain specific portfolio assets of the mutual fund that have not been allocated for specific purposes and that are available to satisfy all or part of the obligations arising from a position in specified derivatives held by the mutual fund. Currently, the definition of "cash cover" includes six different categories of securities, including certain evidences of indebtedness (cash equivalents and commercial paper) that generally have a remaining term to maturity of 365 days or less and that have an approved credit rating or are issued or guaranteed by an entity with an approved credit rating (collectively, "short-term debt").

23. In addition to the securities currently included in the definition of cash cover, the Funds would also like to invest in Fixed Income Securities, floating rate evidences of indebtedness and/or securities of the Mackenzie Money Market Funds for purposes of satisfying their cash cover requirements.

Fixed Income Securities

24. While the money market instruments that are currently permitted as cash cover are highly liquid, these instruments typically generate very low yields relative to longer dated instruments and similar risk alternatives.

25. The definition of cash cover in NI 81-102 addresses regulatory concerns of interest rate risk and credit risk by limiting the terms of the instruments and requiring the instruments to have an approved credit rating. By permitting the Funds to use for cash cover purposes Fixed Income Securities with a remaining term to maturity of 365 days or less and an approved credit rating, the regulatory concerns are met, since the term and credit rating will be the same as other instruments currently permitted to be used as cash cover.

Floating Rate Evidences of Indebtedness

26. Floating rate evidences of indebtedness, also known as floating rate notes ("FRNs"), are debt securities issued by the federal or provincial governments, the Crown or other corporations and other entities with floating interest rates that reset periodically, usually every 30 to 90 days.

27. Although the term to maturity of FRNs can be more than 365 days, the Funds propose to limit their investment in FRNs used for cash cover purposes to those that have interest rates that reset at least every 185 days.

28. Allowing the Funds to use FRNs for cash cover purposes could increase the rate of return earned by each of the Fund's investors without reducing the credit quality of the instruments held as cash cover. It is submitted that the frequent interest rate resets mitigate the risk of investing in FRNs as cash cover. For the purposes of money market funds under NI 81-102 meeting the 90 days dollar-weighted average term to maturity, the term of a floating rate evidence of indebtedness is the period remaining to the date of the next rate setting. If a FRN resets every 365 days, then the interest rate risk of the FRN is about the same as a fixed rate instrument with a term to maturity of 365 days.

29. Financial instruments that meet the current cash cover requirements have low credit risk. The current cash cover requirements provide that evidences of indebtedness of issuers, other than government agencies, must have approved credit ratings. As a result, if the issuer of FRNs is an entity other than a government agency, the FRNs used by the Funds for cash cover purposes will have an approved credit rating as required by NI 81-102.

30. Given the frequent interest rate resets, the nature of the issuer and the adequate liquidity of FRNs, the risk profile and the other characteristics of FRNs are similar to those of short-term debt, which constitute cash cover under NI 81-102.

Mackenzie Money Market Funds

31. Under NI 81-102, in order to qualify as money market funds, the Mackenzie Money Market Funds are restricted to investments that are, essentially, considered to be cash cover. These investments include floating rate evidences of indebtedness if their principal amounts continue to have a market value of approximately par at the time of each change in the rate to be paid to their holders.

32. If the direct investments of the Mackenzie Money Market Funds would constitute cash cover under NI 81-102 (assuming that the relief allowing FRNs

as cash cover is granted), then it is submitted that indirectly holding these investments through an investment in the securities of Mackenzie Money Market Funds should also satisfy the cash cover requirements of NI 81-102.

Derivative Policies and Risk Management

33. Mackenzie has adopted various written policies and internal procedures to supervise the use of derivatives as investments with its fund portfolios. All policies and procedures comply with the derivative rules set out in NI 81-102.

34. These policies and procedures are reviewed at least annually by senior management of Mackenzie. The designated Senior Vice-President, Investments of Mackenzie is responsible for oversight of all derivatives strategies used by the Funds. In addition, compliance personnel employed by both the portfolio advisors/sub-advisors and Mackenzie review the use of derivatives as part of their ongoing review of Fund activity. Compliance personnel are not members of the investment and trading group and report to a different functional area.

35. Limits and controls on the use of derivatives are part of Mackenzie's compliance regime and include reviews by compliance analysts who ensure that the derivative positions of the Funds are within applicable policies. As the use of the derivatives by the Funds is limited, Mackenzie does not currently conduct simulations to test the portfolio under stress conditions.

36. The derivative contracts entered into by Mackenzie, a portfolio advisor or portfolio sub-advisor on behalf of the Funds must be in accordance with the investment objectives and strategies of each of the Funds. Mackenzie, the portfolio advisors and portfolio sub-advisors of the Funds are also required to adhere to NI 81-102. Mackenzie sets and reviews the investment policies of the Funds, which also allows the trading in derivatives.

37. The annual information forms of the Funds disclose the internal controls and risk management processes of Mackenzie regarding the use of derivatives and, upon renewal of the prospectus and annual information forms of the Funds, will include disclosure of the nature of the exemptions granted in respect of the Funds.

38. Without these exemptions regarding the cash cover requirements of NI 81-102, the Funds will not have the flexibility to potentially enhance yield and to more effectively manage their exposure under specified derivatives.

General

39. The use of derivatives by investors and portfolio managers has increased substantially during the last 20 to 30 years. Mackenzie is seeking an exemption to permit the Funds to engage in strategies consistent and/or familiar with industry practice.

40. Mackenzie believes that the Requested Relief will be in the best interests of the Funds as they save costs, potentially enhance performance of the Funds or reduce risks and do not leave the Funds exposed to any material incremental risk beyond the risk that the portfolio manager is targeting and are or will be consistent with the investment objectives and strategies of the respective Funds. Mackenzie further believes the Requested Relief is not contrary to the public interest.

DECISION

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

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

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

(ii) the FRNs meet the following requirements:

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

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

(c) if the FRNs are issued by a person or company other than a government or permitted supra-national agency, the FRNs must have an approved credit rating;

(d) if the FRNs are issued by a government or permitted supra-national agency, the FRNs have their principal and interest fully

and unconditionally guaranteed by:

(I) the government of Canada or the government of a jurisdiction in Canada; or

(II) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a "permitted supranational agency" as defined in NI 81-102, if, in each case, the FRN has an "approved credit rating" as defined in NI 81-102; and

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

(iii) at the time of the next renewal of the prospectus and annual information form of the Funds, each of the Funds relying upon this relief shall disclose the nature of this relief in each Fund's prospectus and the nature and terms of the relief in each Fund's annual information form.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.9 Lilydale Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Filer to enter into share compensation arrangements with employees and senior management – Shares to be repurchased through plan trust for tax efficiency – Filer granted exemption from the prospectus, registration and issuer bid requirements, subject to conditions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 95 to 100,104(2)(c).
National Instrument 45-106 – Prospectus and Registration Exemptions.
National Instrument 45-102 – Resale of Securities.

Citation: Lilydale Inc., 2007 ABASC 736

October 17, 2007

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

AND

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

AND

IN THE MATTER OF
LILYDALE 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 under the securities legislation of the Jurisdictions (the **Legislation**) that:

(a) the prospectus and registration requirements of the Legislation (the **Prospectus and Registration Requirements**) do not apply to acquisitions of the Filer's common shares (the **Common Shares**) by the Plan Trust (as defined below) from Plan Participants (as defined below);

(b) in respect of the Jurisdictions other than Québec, the issuer bid requirements in the Legislation (the **Issuer Bid**

Requirements) do not apply to acquisitions of Common Shares by the Plan Trust from Plan Participants; and

(c) in Alberta only, the Issuer Bid Requirements do not apply to acquisitions of Common Shares by the Filer from the Plan Trust.

(collectively, the **Requested Relief**).

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

(a) the Alberta Securities Commission (the **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 following facts presented by the Filer:

(a) The Filer is a corporation continued and amalgamated under the *Canada Business Corporations Act* with a registered office in Edmonton, Alberta.

(b) The authorized capital of the Filer consists of an unlimited number of Common Shares issuable in series. At June 15, 2007, there were 4,627,979 Common Shares issued and outstanding held by 1175 security holders.

(c) The Filer is not a reporting issuer or the equivalent thereof in any jurisdiction of Canada and its securities are not quoted or traded on any published market or stock exchange.

(d) The Filer is in compliance in all material respects with the applicable requirements of the Legislation.

(e) The Filer intends to implement both a long-term management incentive plan (**LTIP**) and an employee share ownership plan (**ESOP**, and together with the LTIP, the **Plans**) in order to provide an additional incentive to management and eligible employees (the **Plan Participants**).

(f) Participation in the LTIP is only available to senior management of the Filer (including the chief executive officer, vice presidents and directors who report to vice presidents). Participation in the ESOP is available to all employees of the Filer who have been employed (either on a full time or regular part time basis) for at least three calendar months.

(g) The LTIP involves an annual grant of Common Shares and options to acquire Common Shares to senior management as part of management's overall compensation.

(h) The ESOP involves a right on the part of employees to purchase Common Shares through regular payroll deductions or contributions.

(i) Each of the Plans requires that when Plan Participants wish to sell Common Shares they must sell them to a trust (the **Plan Trust**) established by the Filer for this purpose, or in the event the Plan Trust is unable to purchase the shares for any reason, to the Filer. Plan Participants will be required to sell their Common Shares in certain circumstances, including death, disability and termination of employment. All sales of Common Shares are specified to occur at the full value per share (as established pursuant to the Plans).

(j) Participation in the Plans by employees is voluntary and such persons are not induced to participate in the Plans by expectation of employment or continued employment with the Filer.

(k) The administration of the Plans, including amendment and termination of the Plans, will at all times remain within the discretion of the Filer's board of directors. In addition, a plan committee consisting of management employees of the Filer will be established to administer the requirements of the ESOP.

(l) The Common Shares to be issued under the LTIP will be a new series of existing Common Shares designated for such purpose. The Common Shares to be issued under the ESOP will either be a new series of Common Shares designated for such purpose or a new class of Common Shares created for such purpose.

(m) The Plan Trust is being established to acquire Common Shares from Plan

Participants rather than having the Common Shares repurchased directly by the Filer in order to permit Plan Participants to dispose of their Common Shares in a tax-efficient manner. After acquiring Common Shares from a Plan Participant, the Plan Trust will immediately transfer the Common Shares back to the Filer at the same value as the Plan Trust acquired the shares from the Plan Participant.

(n) The Plan Trust will be settled by the Filer as a new inter-vivos trust that is resident in Canada with nominal capital. The trustees of the Plan Trust will be various members of the board of directors or senior management of the Filer. The Plan Trust will be established with the specific purpose of purchasing Common Shares from Plan Participants who wish to or are required to sell their Common Shares. The only beneficiary of the Plan Trust will be the Filer and it will not conduct any other activities.

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 Requested Relief is granted, provided that:

(a) the Common Shares are acquired by a Plan Participant in compliance with Section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

(b) the first trade of the Common Shares acquired by the Plan Trust pursuant to this decision will be subject to Section 2.6 of National Instrument 45-102 *Resale of Securities*.

"William S. Rice", QC
Alberta Securities Commission

"Glenda A. Campbell", QC
Alberta Securities Commission

2.1.10 Harvest Grand Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications- Issuer has only one security holder- Issuer is not a reporting issuer under applicable securities laws.

Applicable Legislative Provisions

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

Citation: Harvest Grand Inc., 2007 ABASC 764

October 24, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
HARVEST GRAND 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 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 in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined differently in this decision.

Representations

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

   (a) The Filer is a corporation incorporated under the *Business Corporations Act* (Alberta) the A.B.C.A. The Filer's head office is located in Calgary, Alberta.

   (b) The authorized capital of the Filer consists of an unlimited number of common shares and an unlimited number of Series 1 preferred shares. As at the date hereof, all of the outstanding common shares of the Filer are owned by Harvest Operations Corp. and all of the outstanding Series 1 preferred shares of the Filer are owned by Harvest Operations Corp.

   The Take-Over Bid for Grand Petroleum Inc.

   (c) On August 10, 2007, the Filer issued a press release announcing that pursuant to an offer dated June 20, 2007, as extended July 26, 2007 (the **Offer)**, the Filer acquired approximately 94.6% of the outstanding common shares (the **Common Shares**) of Grand Petroleum Inc. (**Grand**) on August 9, 2007.

   (d) Following the expiry of the Offer, the Filer acquired the remaining Common Shares pursuant to the compulsory acquisition provisions of the A.B.C.A. on August 15, 2007.

   (e) The Common Shares were de-listed from the TSX Venture Exchange on August 23, 2007. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

   (f) The Filer and Grand were amalgamated with the amalgamated company continuing under the name "Harvest Grand Inc." on August 16, 2007 (the **Amalgamation**).

   (g) As a result of the Amalgamation, by operation of law, the Filer became a reporting issuer in the Jurisdictions in which Grand had been a reporting issuer, which included British Columbia.

   (h) The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the Jurisdictions and fewer than 51 securityholders in Canada. Currently, Harvest Operations Corp. beneficially owns all of the Common Shares.

   (i) The Filer has no current intention to seek public financing by way of an offering of securities.

   (j) The Filer is applying for relief to cease to be a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer.

   (k) On September 20, 2007, the Filer filed a notice in British Columbia under BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* stating that it will cease to be reporting issuer in British Columbia on September 30, 2007. On September 25, 2007, the British Columbia Securities Commission sent notice that it had received and accepted such notice.

   (l) The Filer is not in default of any of its obligations under the Legislation other than with respect to the failure to file its interim financial statements for the period ended June 30, 2007 and the Management Discussion and Analysis for such financial statements under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification for such financial statements under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

   (m) Upon the grant of the relief requested herein, the Filer will not be a reporting issuer in any jurisdiction in Canada.

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 requested relief be granted.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.2 Orders

2.2.1 Merax Resource Management Ltd. et al.

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

AND

IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.
CARRYING ON BUSINESS AS
CROWN CAPITAL PARTNERS,
RICHARD MELLON AND ALEX ELIN

ORDER

WHEREAS on November 29, 2006 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing as amended on November 30, 2006 pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S.5, to consider whether it is in the public interest to make certain orders against Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon ("Mellon") and Alex Elin ("Elin");

AND WHEREAS on December 6, 2006, Staff and counsel for Mellon and Elin attended a hearing and requested that the matter be adjourned to February 27, 2007 in order to allow counsel for Mellon and Elin to review disclosure and possibly set a hearing date;

AND WHEREAS on February 27, 2007, Staff and counsel for Mellon and Elin attended a hearing and requested that the matter be adjourned to April 16, 2007 in order to have a pre-hearing conference on or before that date;

AND WHEREAS on April 12, 2007, Staff and counsel for Mellon and Elin attended a pre-hearing conference before Commissioner Paul Bates;

AND WHEREAS on April 16, 2007, Staff and counsel for Mellon and Elin requested that this matter be adjourned to April 27, 2007 for the purpose of setting a hearing date;

AND WHEREAS on April 27, 2007, Mellon, Elin and Staff attended a hearing and the panel was advised that Mellon and Elin are now unrepresented and Mellon, Elin and Staff requested that this matter be adjourned to May 4, 2007 for the purpose of setting a hearing date;

AND WHEREAS on May 4, 2007 the Commission ordered the hearing to commence on October 22, 2007;

AND WHEREAS on October 12, 2007, Staff, Mellon and Elin attended a further pre-hearing conference before Commissioner Bates; and following an adjournment request by the Respondent Elin, the Commission adjourned the hearing scheduled for October 22, 2007 to December 12, 2007 to set a new date for a hearing;

IT IS HEREBY ORDERED that the hearing scheduled for October 22, 2007 is adjourned to December 12, 2007 to set a new date for a hearing.

DATED at Toronto this 12th day of October, 2007.

"Paul K. Bates"

2.2.2 Mega-C Power Corporation et al. - s. 127

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

AND

**IN THE MATTER OF
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED**

**ORDER
(Section 127)**

WHEREAS Gary Usling filed a Request for Adjournment of the hearing on the merits scheduled for October 29, 2007;

AND WHEREAS the matter was set for a pre-hearing conference on October 18, 2007;

AND WHEREAS not all parties were available for the pre-hearing conference;

IT IS HEREBY ORDERED that:

> The Request for Adjournment will be heard by a Panel of the Commission on October 23, 2007 at 3:30 p.m.

DATED at Toronto this 18th day of October, 2007.

"Robert L. Shirriff"
Commissioner

2.2.3 Petaquilla Copper Ltd. - s. 144(1)

Headnote

Section 144 -- Revocation of cease trade order -- Issuer subject to cease trade order as a result of its failure to file annual financial statements -- Issuer has brought filings up to date and is otherwise not in default of Ontario securities law.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(1), 144.

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

AND

**IN THE MATTER OF
PETAQUILLA COPPER LTD.**

**ORDER
(Subsection 144(1))**

WHEREAS the securities of Petaquilla Copper Ltd. (the "Filer") are subject to a Temporary Order made by the Director dated September 7, 2007, under paragraphs 2 and 2.1 of subsection 127(1) and subsection 127(5) of the Act, as extended by an Order made by the Director dated September 19, 2007, under paragraphs 2 and 2.1 of subsection 127(1) of the Act (together, the Cease Trade Order) directing that trading in and acquisitions of the securities of the Filer cease until the Cease Trade Order is revoked by the Director;

AND WHEREAS the Filer has made an application to the Ontario Securities Commission (the "Commission") for a revocation of the Cease Trade Order pursuant to subsection 144(1) of the Act;

AND UPON the Filer representing to the Commission that:

(a) The Filer was amalgamated under the laws of the Province of British Columbia on March 15, 2006, and is governed under the laws of the Province of British Columbia.

(b) The Filer is a reporting issuer mineral exploration company created to pursue mineral exploration, development and production in the Republic of Panama.

(c) The Filer is a reporting issuer in Alberta, British Columbia and Ontario. The Filer is not a reporting issuer in any other jurisdiction in Canada.

(d) The authorized share capital of the Filer consists of an unlimited number of common shares and an unlimited number of preference shares, of which 149,577,254 common shares are issued and outstanding.

(e) Although the Filer is a reporting issuer, the common shares of the Filer are not listed on any Canadian stock exchange. There are no securities of the Filer currently listed or posted for trading or quoted on any other exchange or market in Canada.

(g) The Cease Trade Order was issued due to the failure to file annual financial statements for the year ended April 30, 2007, and management's discussion and analysis relating to the annual financial statements for the year ended April 30, 2007, and interim financial statements for the three months ended July 31, 2007, and management's discussion and analysis relating to the interim financial statements for the three months ended July 31, 2007, as required by Ontario securities law (the "Continuous Disclosure Documents").

(h) The British Columbia Securities Commission issued a cease trade order dated September 5, 2007, which was revoked on October 4, 2007.

(i) The Filer has filed the Continuous Disclosure Documents with the Commission through SEDAR and is up-to-date on all its other continuous disclosure obligations, has paid all outstanding filings fees and has complied with National Instrument 51-102 *Continuous Disclosure Obligations* regarding delivery of financial statements and except for the Cease Trade Order, is not otherwise in default of any requirement of Ontario securities law.

(j) The Filer has not been subject to any prior cease trade orders.

(k) There have been no changes of directors, officers, insiders or controlling shareholders of the Filer since the date of the Cease Trade Order.

(l) There have been no material changes to the Filer's business or operations since the date of the Cease Trade Order, and there are currently no such material changes planned.

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

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order is revoked.

DATED October 19, 2007

"Jo-Anne Matear"
Assistant Manager, Corporate Finance

2.2.4 Land Banc of Canada Inc. et al. - ss. 126, 127

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

AND

IN THE MATTER OF
LAND BANC OF CANADA INC.,
LBC MIDLAND I CORPORATION,
FRESNO SECURITIES INC.,
RICHARD JASON DOLAN, MARCO LORENTI,
AND STEPHEN ZEFF FREEDMAN

ORDER
SECTION 126 and 127

WHEREAS on the 23rd day of April, 2007, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading by Land Banc of Canada ("LBC"), LBC Midland I Corporation ("Midland"), Fresno Securities Inc. ("Fresno"), Richard Jason Dolan ("Dolan"), Marco Lorenti ("Lorenti") and Stephen Zeff Freedman ("Freedman"), (the "Respondents"), in any securities of Midland or any other corporation controlled by LBC, Dolan or Lorenti shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on the 23rd day of April, 2007, the Commission issued a Direction under s.126(1) of the Act to the Bank of Montreal branch at 2851 John St., in Markham, Ontario (the "BMO Markham Branch") to retain all funds, securities or property on deposit in the name of or otherwise under control of Midland at the BMO Markham Branch (the "Direction");

AND WHEREAS on the 30th of April, 2007 the Direction was continued on consent at the Superior Court of Justice (the "Court") until further notice of the Court but without prejudice to Midland to apply to the Commission to vary the Direction under s.126(7);

AND WHEREAS on May 1, 2007, the Commission issued a Notice of Hearing and Statement of Allegations in this matter;

AND WHEREAS on May 8, 2007, the Commission continued the Temporary Order against LBC, Midland, Dolan and Lorenti with certain amendments respecting Dolan and Lorenti until May 17, 2007;

AND WHEREAS on May 17, 2007, the Commission continued the Temporary Order against LBC, Midland, Dolan and Lorenti with certain amendments respecting Dolan and Lorenti until June 29, 2007;

AND WHEREAS on June 29, 2007, the Commission continued the Temporary Order against LBC, Midland, Dolan and Lorenti with certain amendments respecting Dolan and Lorenti until August 7, 2007;

AND WHEREAS on August 7, 2007, the Commission continued the Temporary Order against LBC, Midland, Dolan and Lorenti with certain amendments respecting Dolan and Lorenti until September 19, 2007;

AND WHEREAS on September 18, 2007, the Commission continued the Temporary Order against LBC, Midland, Dolan and Lorenti with certain amendments respecting Dolan and Lorenti until October 24, 2007;

AND WHEREAS upon submissions from counsel for Staff of the Commission and from counsel for LBC, Midland, Dolan and Lorenti;

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 December 3, 2007 against LBC, Midland, Dolan and Lorenti with the following amendments respecting Dolan and Lorenti, until further order of the Commission;

2. Dolan shall be permitted to trade in securities listed on a recognized exchange, including mutual fund units, only in his own existing account(s) and through a dealer registered with the Commission;

3. Lorenti shall be permitted to trade in securities listed on a recognized exchange, including mutual fund units, only in his own existing account(s) through a dealer registered with the Commission;

4. the Direction is continued until December 3, 2007 subject to the payment of expenses related to Midland approved by Staff in writing; and

5. this Order shall not affect the right of LBC, Midland, Dolan and Lorenti to apply to the Commission to clarify or revoke the Temporary Order or Direction prior to December 3, 2007 upon three days notice to Staff of the Commission.

Dated at Toronto this 24th day of October, 2007

"Patrick J. LeSage"

"Suresh Thakrar"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 The TSX Inc. et al.

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

AND

IN THE MATTER OF
THE TSX INC., MARKET REGULATION SERVICES INC.,
NORTHERN SECURITIES INC., VIC ALBOINI, CHRISTOPHER SHAULE

AND

IN THE MATTER OF
A HEARING AND REVIEW OF DECISIONS OF THE TSX
AND THE DIRECTOR REGARDING THE APPROVAL OF
CERTAIN AMENDMENTS TO THE RULES AND POLICIES OF THE TSX

AND

IN THE MATTER OF
A MOTION TO QUASH THE REQUEST FOR HEARING AND REVIEW

AND

IN THE MATTER OF
A MOTION BY THE REQUESTING PARTIES TO DISMISS THE MOTION TO QUASH

REASONS AND DECISION

Hearing:	July 19, 2007	
Decision:	October 23, 2007	
Panel:	Lawrence E. Ritchie	Vice-Chair and Chair of the Panel
	James E. A. Turner	Vice-Chair
	Harold P. Hands	Commissioner
Counsel:	Yvonne Chisholm Rossana Di Lieto	For the Ontario Securities Commission
	Jeffrey A. Kaufman David A. Hausman	For Northern Securities Inc., Vic Alboini and Christopher Shaule
	Peter Wardle Daniel Bernstein	For the TSX Group Inc.
	Brian Gover Brendan Van Niejenhuis	For Market Regulation Services Inc.

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REASONS AND DECISION

A. BACKGROUND

1. Introduction

[1] This matter arises out of an application (being an Amended Request for Hearing and Review) made to the Ontario Securities Commission (the "Commission") by parties to an ongoing proceeding (the "RS Proceeding") of a self-regulatory organization ("SRO") over which the Commission has oversight (the "Amended Request").

[2] Before us, are two (2) motions. A motion brought by Staff of Market Regulation Services Inc. ("RS Staff") to quash the pending Amended Request (the "RS Motion"), and a responding cross-motion (the "Requesting Parties' Motion") to quash the RS Motion. As described in more detail below, the issues raised require us to determine whether the Commission has the jurisdiction to hear the Amended Request brought by the Requesting Parties (as defined below) and, if yes, whether we should exercise our discretion to do so in the present circumstances. The determination of these issues will determine the outcome of both the RS Motion and the Requesting Parties' Motion.

[3] This matter has raised difficult issues for us. On the one hand, the Requesting Parties are taking steps to defend themselves against the allegations made by RS Staff in the RS Proceeding. They are clearly frustrated by the chain of events that have led them to our doorstep. On the other hand, we are very conscious of the ongoing RS Proceeding (described in further detail below), and our need to support, and not unduly interfere with, the processes of a recognized SRO. We are sympathetic to the Requesting Parties' desire to have the issues raised by the Amended Request dealt with by us. However, we are not prepared to interfere with the RS Proceeding to do so at this time, for the reasons that follow.

[4] This matter raises some rather novel issues regarding this Commission's oversight of the adjudicative process of an SRO. The background facts are complicated and they reflect a somewhat tortured history of the proceedings. In the course of their presentations before us, counsel did an excellent job of clarifying an otherwise opaque story. We try to replicate these efforts in our reasons and decision below.

2. The Parties

[5] The TSX is a stock exchange recognised by the Commission pursuant to subsection 21(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"). The Commission order recognizing the Toronto Stock Exchange, dated January 29, 2002 ((2002), 25 O.S.C.B. 929) (the "Recognition Order"), provides that the TSX shall comply with the *Protocol for Commission Oversight of Toronto Stock Exchange Rules Proposals*, dated October 23, 1997 ((1997), 23 O.S.C.B. 5683) (the "Protocol").

[6] RS exercises the delegated authority of the TSX Board of Directors (the "TSX Board of Directors") pursuant to subsections 13.0.8(1), (2) and (4) of the *Toronto Stock Exchange Act*, R.S.O. 1990, c. T.15 (the "*TSE Act*"). As the regulation services provider to the TSX, RS is required to administer and enforce the Universal Market Integrity Rules (the "UMIR") on behalf of the TSX (basically, RS performs the enforcement function that the TSX itself performed prior to its demutualization in the early part of this decade). RS's role as the agent of the TSX is specifically addressed in the TSX Recognition Order.

[7] RS exercises the delegated authority of the TSX Board of Directors to "govern and regulate" the parties involved in this matter, namely Northern Securities Inc. ("Northern"), Christopher Shaule ("Shaule") and Vic Alboini ("Alboini") (collectively, the "Requesting Parties"). Alboini is Northern's Chief Executive Officer and Shaule is Northern's Chief Financial Officer during the time material to the RS Proceeding.

[8] Northern is a party to a participating organization agreement with the TSX, dated May 1, 2000; this agreement obliges Northern to comply with and be bound by TSX requirements.

[9] Neither Northern nor the individual Requesting Parties are subject to any direct contractual relationship with RS. RS's regulatory mandate as it pertains to the Requesting Parties arises from a regulation services agreement that RS has entered into with the TSX. The Requesting Parties are not subject to RS regulation except to the extent that the TSX's Board of Directors has expressly delegated enforcement responsibilities to RS as its agent or adopted rules developed by RS as exchange requirements.

[10] Staff of the Commission ("Commission Staff") are also a party to the proceeding for the Amended Request before the Commission.

3. The TSX's Legislative Framework and the Effect of the UMIR Amendments

[11] Subsection 13.0.8(4) of the *TSE Act* grants the TSX the authority to delegate enforcement of exchange requirements to RS. RS is now responsible for enforcement matters on behalf of the TSX.

[12] Prior to the creation of RS, each exchange in Canada regulated trading in its own marketplace with its own set of trading rules, some of which were similar and some of which varied from exchange to exchange. To harmonize the different rules used by different exchanges, RS introduced the UMIR as a common set of equities trading rules in order to ensure fairness, maintain investor confidence and simplify the existing exchange rules.

[13] The UMIR create the framework for the integrated regulation of marketplace trading activity and allow for the competitive operation of exchanges, quotation and trade reporting systems and alternative trading systems in Canada. Basically, the purpose of the UMIR is to regulate various trading practices, including manipulative or deceptive methods of trading, short selling, frontrunning, best execution obligations, order entry and order exposure, as well as trading halts, delays and suspensions. With respect to the RS Proceeding, it is the adoption of the UMIR, specifically UMIR 7.1, with which the Requesting Parties take issue, and the Requesting Parties challenge its validity in connection with the steps taken to adopt the UMIR in 2002 and to amend the UMIR in 2006.

[14] According to the Protocol, the TSX may adopt rules, that the TSX Board of Directors (note that prior to demutualization the TSX Board of Directors was referred to as the Board of Governors) classify as either "public interest" or "non-public interest" rules. The terms "public interest" and "non-public interest" are defined in section 2 of the Protocol:

> 2. *"Public Interest v. "Non-public Interest"*
>
> A "public interest" Rule would be any Rule that, in the opinion of the Exchange;
>
> a) impinges upon the application of Ontario securities law; or
>
> b) could have a material impact (either positive or negative) on public investors, listed or unlisted companies or non-member registrants.
>
> Any Rule falling outside of this definition would be categorized as a "non-public interest" Rule.
>
> Prior to proposing a Rule that is of a "public interest" nature, as defined above, the Board of Governors shall have determined that the entry into force of such "public interest" Rule would be in the best interests of the capital markets for Ontario. The material filed with the Commission in relation to "public interest" Rules shall be accompanied by a statement to that effect.

[15] According to section 1 of the Protocol, the TSX must file all TSX rules and amendments adopted by the TSX Board of Directors with the Commission for approval, whether they are classified as "public interest" or "non-public interest". However, the Protocol sets out a different process for adopting and amending "public interest" and "non-public interest" rules.

[16] For clarity, the relevant sections of the Protocol which establish the process for adopting "public interest" and "non-public interest" rules is set out in Schedule "A" attached to this decision.

[17] As mentioned above, the *TSE Act* provides the TSX with the power to regulate and govern market participants. The *TSE Act* also provides that the TSX can delegate this power, and the TSX has in fact delegated this power to RS. The relevant sections of the *TSE Act* are set out in Schedule "B" attached to this decision.

4. Chronology of Events Leading to the Motions before the Commission

[18] The following is a summary of the events that led to the RS Motion and the Requesting Parties' Motion.

i. UMIR Amendments in 2002

[19] On October 12, 2001, a notice was issued by the TSE (prior to July 10, 2002, the TSX was called the TSE) stating that regulators would be "reviewing and approving the final version of the UMIRs". The notice issued at the time indicated clearly that the TSE was treating the UMIR as being made in the public interest.

[20] On February 15, 2002, in its Notice of Approval, (2002), 25 O.S.C.B. 891, the Commission recognized RS as an SRO effective on January 29, 2002. The notice stated specifically that the recognising regulators, including the Commission, approved the UMIR and a copy of the UMIR and the accompanying policies was published.

[21] On March 7, 2002, a notice was issued by the TSX that the TSX would adopt UMIR. It stated that RS has adopted, "and the Recognizing Regulators have approved", the UMIR and that the effective date of the UMIR was April 1, 2002. The notice stated that existing rules and policies of the exchange would be amended with the adoption of the UMIR.

[22] On August 9, 2002, the TSX issued its Request for Comments regarding the amendments to the rules and policies of the exchange. The amendments were approved by the TSX Board of Directors on March 26, 2002. The notice provided that the amendments would be "effective upon approval by the OSC following public Notice and Comment".

[23] The TSX did not formally file the UMIR amendments (the "UMIR Amendments") with the Commission in accordance with the Protocol, after completion of the approval process. This omission is one of the matters with which the Requesting Parties take issue.

ii. The RS Proceeding: Notice of Hearing and Statement of Allegations

[24] On October 20, 2005, RS Staff issued a Statement of Allegations and a Notice of Hearing and commenced the RS Proceeding against Northern, Alboini and Shaule.

[25] The Statement of Allegations was subsequently amended on February 6, 2007. The RS Proceeding relates to alleged conduct and activities which took place in 2003, 2004 and 2005, and deals with the compliance standards of Northern in relation to Northern's supervision of trading practices, audit trail and order entry issues and grey-list trading. In the RS Proceeding, RS Staff allege, amongst other allegations, that the Requesting Parties did not comply with UMIR 7.1 and RS Policy 7.1.

[26] During the course of the RS Proceeding, the Requesting Parties identified and raised issues respecting the validity of amendments to the TSX rules and policies purporting to adopt the UMIR in 2002. Among other things, the Requesting Parties allege that the TSX was obliged under the Protocol to seek and obtain approval of the UMIR Amendments from the Commission but did not do so.

[27] The Requesting Parties take the position in the RS Proceeding that pursuant to the terms of the Recognition Order, the TSX cannot make or amend any of its rules without complying with the Protocol.

[28] The resolution of the TSX's Board of Governors regarding the adoption of the UMIR Amendments expressly provides that the UMIR Amendments will come into force only following any Commission approval. According to the Requesting Parties, therefore, the UMIR Amendments cannot be effective unless and until they are approved by the Commission. The Protocol establishes in section 4 that rules identified by the TSX Board of Directors as being made in the "public-interest" (as defined in section 2 of the Protocol) have to be subject to a request for public comment process, after which time, they can be approved by the Commission (subsection 8.2(1) of the Protocol). In contrast, rules designated as "non-public interest" rules (pursuant to section 2 of the Protocol) are not subject to a comment process. These "non-public interest" rules are deemed to be approved by the Commission upon being filed with the Commission pursuant to section 8.1 of the Protocol. For whatever reason, the 2006 UMIR Amendments were not filed with the Commission at the time the RS Proceeding commenced.

iii. The Superior Court Application and Justice Campbell's Decision

[29] On October 20, 2005, in response to RS Staff's Notice of Hearing, the Requesting Parties filed a Superior Court application (the "Superior Court Application") seeking to stay or terminate the RS Proceeding on the grounds that UMIR 7.1 and RS Policy 7.1 were impermissibly vague, among other things. The RS Proceeding was adjourned at that time so that the Superior Court Application could be heard first.

[30] On April 6, 2006, counsel for RS Staff and the TSX brought a motion to quash the Superior Court Application on the basis that it was premature. On May 4, 2006, Justice Campbell heard the motion to quash, and on May 24, 2006, held that the Requesting Parties were seeking to prematurely decide issues before the Superior Court that should go before the RS hearing panel in the RS Proceeding (the "RS Hearing Panel") in the first instance. Specifically, Justice Campbell stated that:

> Whether the issues raised in the discipline proceeding initiated fall entirely within the jurisdiction of the regulatory regime set out above should be determined by that body and then by the OSC, before review either in this Court or by the Divisional Court (*Northern Securities Inc., Vic Alboini and Christopher Shaule v. Market Regulation Services Inc. and the Toronto Stock Exchange Inc* (24 May 2006), Toronto 05-CV-298881PD1 (Ont. Sup. Ct.) at para. 25 ("Justice Campbell's Decision")).

[31] According to Justice Campbell, the challenges to the validity of the UMIR ought to be argued before the RS Hearing Panel and then, if any party wishes to appeal the decision of the RS Hearing Panel, appealed by way of hearing and review to this Commission, and only then, should it be taken to the courts.

[32] Justice Campbell also stated that "[t]he rule that premature applications for judicial review must be quashed applies to jurisdictional issues as well" (Justice Campbell's Decision, *supra* at para. 29).

[33] The Requesting Parties initially appealed Justice Campbell's Decision, but later abandoned the appeal on January 8, 2007.

iv. The Original Motion before the RS Hearing Panel

[34] Following Justice Campbell's Decision, the Requesting Parties served a notice of motion on RS Staff on July 24, 2006 taking issue with the validity of the UMIR Amendments (the "Original Motion"). The Original Motion was the first time the Requesting Parties brought to the attention of RS Staff the issue of the proper process for adopting the UMIR Amendments and their validity.

v. The Adjournment Granted to RS Staff

[35] The Original Motion was initially scheduled to be heard by the RS Hearing Panel on September 11, 2006. However, during a conference call on September 6, 2006, RS Staff sought an adjournment of the Original Motion.

[36] RS Staff cited reasons for the requested adjournment, including the need for further time to properly respond to new and complex issues that were not previously raised, as well as the need to accommodate the vacation schedule of RS Staff.

[37] The adjournment was granted by the RS Hearing Panel and the new hearing date for the Original Motion was set down for October 10, 2006.

vi. The TSX Filing – 2006 Amendments

[38] On September 21, 2006, during the adjournment of the RS Proceeding, the TSX filed the UMIR Amendments with the Commission (the "TSX Filing"). The TSX Filing purported to facilitate retroactive approval of the UMIR Amendments (the "2006 UMIR Amendments"). The Requesting Parties were not given prior notice of the TSX Filing.

[39] According to the TSX, the 2006 UMIR Amendments were not classified as "public interest" rules because they were of an administrative nature. As explained by the TSX in a notice published in the Ontario Securities Commission Bulletin on September 29, 2006 (*TSX Inc. Notice – Filing of Housekeeping Amendment to the Rules of the Toronto Stock Exchange Relating to the Adoption of Universal Market Integrity Rules* (2006) 29 O.S.C.B. 7815):

> The Amendments are not considered to be a "public-interest" rule amendment. The Amendments are administrative in nature, as they merely reflect the adoption of UMIR, which were approved by the OSC and other applicable provincial securities commissions. The Amendments do not impact any Rules that are specific to the Exchange.

[40] The TSX Filing contained a representation to the Commission that "all market participants have operated under a common understanding that the Amendments [to the TSX Rules adopting UMIR] were effective April 1, 2002" as the basis for the TSX's request that the UMIR Amendments have retroactive effect.

[41] On September 29, 2006, after the TSX Filing, RS Staff filed responding materials to the Original Motion which included the TSX Filing.

[42] According to submission, when the Requesting Parties reviewed the motion materials, they discovered that the TSX had made a filing dated September 21, 2006 purporting to constitute retroactive approval of the TSX Filing/UMIR Amendments (the "2006 UMIR Amendments"). The Requesting Parties state that they received no advance notice of the TSX Filing. No other party appearing before us disputed these assertions.

[43] Upon being informed on October 5, 2006 by RS Staff that the Commission had published notice of approval of the 2006 UMIR Amendments in the OSC Bulletin, the Requesting Parties wrote to the Director, Capital Markets (the "Director"), on October 6, 2006, advising as to the circumstances giving rise to the TSX Filing and requesting, among other things, that the Director revoke the Commission's approval of the 2006 UMIR Amendments (the "Letter to the Director"). The Requesting Parties have received no response to this letter.

[44] In addition, in order to address the new circumstances arising from the TSX Filing, the Requesting Parties brought another motion to the RS Hearing Panel, returnable on October 10, 2006 (the "New RS Motion"). The New RS Motion seeks orders, among other things, to declare the 2006 UMIR Amendments to be invalid and to dismiss the RS Proceeding. The Original Motion, which questioned the validity of the UMIR Amendments in connection with the process of their adoption in 2002, is still outstanding.

vii. The Decision of the RS Hearing Panel to Adjourn

[45] On October 10, 2006, the Requesting Parties brought the Original Motion and the New RS Motion before the RS Hearing Panel. Following a lengthy exchange between the RS Hearing Panel and counsel for the parties, the RS Hearing Panel decided to adjourn the Original Motion and the New RS Motion (and other motions pertaining to particulars and disclosure

issues) *sine die* (the "Adjournment"). A review of the transcript of that proceeding indicates that the Adjournment was granted in the context of the unanswered Letter to the Director.

[46] In its ruling, the Chair of the RS Hearing Panel stated the following:

> […] we have concluded that […] there is no valuable or pragmatic purpose to be achieved by proceeding with a matter that ultimately will be decided by the Ontario Securities Commission.
>
> Proceeding with the argument today will entail a great deal of expense to the respondents whether or not they are successful, and regardless of the ruling that this panel makes on either, both the motions, the ultimate decision lies with a higher authority, and in these circumstances the order of the panel is that this, motion and everything else, be adjourned sine die to be brought back on a date to be agreed by the parties […] (*RS Hearing Panel Transcript*, dated October 10, 2006 at 40:6-20).

[47] At the RS Hearing Panel's request, counsel for the Requesting Parties confirmed that it would proceed before the Commission promptly. RS Staff did not appeal, or seek judicial review of the Adjournment. As discussed further below, the Requesting Parties assert that the RS Motion is a collateral attack on the decision of the RS Hearing Panel to grant the Adjournment.

viii. The Request and RS Staff's Concession

[48] On October 20, 2006, the Requesting Parties brought a Request for Hearing and Review (the "Request") before the Commission.

[49] Specifically, the Request sought:

(1) An order declaring that the 2006 UMIR Amendments/TSX Filing are invalid;

(2) In the alternative, an order declaring that the 2006 UMIR Amendments do not have retroactive effect;

(3) A declaration that the 2006 UMIR Amendments are "public interest" rule amendments within the meaning of the Protocol;

(4) An order dismissing the RS Proceeding against the Requesting Parties; and

(5) Such further and other relief as is appropriate.

[50] According to the Requesting Parties, following receipt of the Request, RS Staff, the TSX and Commission Staff expressed no objection to the Request and these proceedings. They emphasize, in fact, that RS Staff was the first party to propose a schedule for the conduct of the hearing before the Commission with respect to the Request.

[51] By letter dated December 7, 2006, RS Staff advised the Requesting Parties that RS Staff would place no reliance on the TSX Filing with the Commission in the RS Proceeding (the "RS Concession"). However, RS Staff specifically maintained their position that the UMIR Amendments have applied to TSX participants since April 1, 2002.

[52] On January 29, 2007, the Requesting Parties notified the Commission that they intended to proceed with the Request before the Commission regardless of the fact that RS Staff had made the RS Concession.

ix. The Amended Request

[53] On February 5, 2007, RS Staff delivered an amended statement of allegations (the "Amended Statement of Allegations") in the RS Proceeding, alleging among other things, that the Requesting Parties are subject to two separate regulatory regimes: the UMIR and, if those rules are invalid, the old TSX rules that were in force before the UMIR. Accordingly, the Requesting Parties found themselves alleged to have contravened two different sets of TSX rules.

[54] As result, on February 9, 2007, the Requesting Parties filed the Amended Request (the "Amended Request") to take into account the Amended Statement of Allegations.

[55] Specifically, in the Amended Request, the Requesting Parties request a hearing and review of:

(1) the decision of the TSX to make the TSX Filing, including its intended retroactive approval of the 2006 UMIR Amendments under the Protocol and under the Recognition Order; and

(2) the decision of the Director (the "Director's Decision") approving the 2006 UMIR Amendments and/or accepting the TSX Filing for approval of the 2006 UMIR Amendments pursuant to the Protocol.

[56] In addition, the Requesting Parties seek remedies from the Commission such as: (1) a declaration that the 2006 UMIR Amendments are invalid; and (2) a declaration that the UMIR Amendments were not effective prior to the TSX Filing, and an order dismissing the RS Proceeding.

5. The Motions Before this Commission

[57] It is within this context that RS Staff brought the RS Motion on March 2, 2007, to quash the Amended Request. In response, the Requesting Parties' Motion to quash the RS Motion was brought on March 27, 2007.

i. The RS Motion to Quash

[58] The RS Motion to quash is for:

(1) an order quashing the Amended Request and/or refusing the Amended Request, and directing that any such issues as are raised in the Amended Request that may be necessary to be determined be remitted to the RS Hearing Panel; and

(2) such further and other relief as counsel may advise and the Commission may deem just.

[59] Counsel for RS Staff submits that it is inappropriate to hear the Amended Request for two reasons: (1) the issue relied on by the Requesting Parties to bring the Amended Request, i.e. the TSX Filing, no longer has any potential relevance to the Requesting Parties (because of the RS Concession) and, accordingly, the proceedings related to the Amended Request are moot; and (2) the Commission should not be used as a "motions court" to hear and determine issues in the middle of ongoing discipline proceedings (so called "interlocutory motions").

[60] In addition, counsel for RS Staff takes the following positions: (1) the UMIR Amendments are valid; and (2) the RS Hearing Panel has the power to hear and determine the issues raised by the Requesting Parties in their Amended Request, and should do so at first instance. With respect to the validity of the UMIR Amendments and the unique sequence of events in this matter, RS Staff states in its motion that:

(i) The TSX Board of Directors validly exercised its statutory power on November 27, 2001, and passed the UMIR Amendments, and in fact repeatedly published and referred to those amendments in the OSC Bulletin;

(ii) The TSX Board of Directors has an independent rule-making authority that does not require Commission pre-approval, pursuant to section 13.0.8 of the *TSE Act*;

(iii) The Commission's power in relation to the TSX rules is an oversight power that is not mandatory but permissive, arising from subsection 21(5)(e) of the Act;

(iv) The only source of any obligation of the TSX to file its rules with the Commission is the Protocol, which is simply a memorandum of understanding (an "MOU") that cannot override the TSX's statutory power;

(v) While the TSX is required to comply with the Protocol as a term of its Recognition Order (which is part of Ontario securities law), the only available remedy for a breach of a Recognition Order lies at the instance of the Commission, which could revoke the TSX's recognition, or amend the terms of recognition; and

(vi) Accordingly, the UMIR Amendments are legally operative and binding on TSX participants.

[61] To support the RS Motion, RS Staff relies on the facts and circumstances of this matter, as described above. The RS Motion indicates that the RS Proceeding was adjourned on October 10, 2006 in order to enable the Requesting Parties to bring the Request before the Commission to deal with the issue of the TSX Filing. However, RS Staff is of the view that the Amended Request should now be quashed because RS Staff has made the RS Concession that no reliance will be placed on the TSX Filing during the RS Proceeding. RS Staff takes the position that the TSX Filing is therefore irrelevant to any issue in the RS Proceeding and the reason to hold a hearing and review has thereby become moot.

[62] The RS Motion also emphasizes that Justice Campbell's Decision has already determined that the issues raised by the Requesting Parties should be addressed before the RS Hearing Panel, and by virtue of their abandonment of their appeal of Justice Campbell's Decision, the Requesting Parties have accepted this position.

[63] Furthermore, counsel for RS Staff asserts that SRO jurisdiction should be respected. Specifically, RS Staff takes the position that it is not in the public interest for the Commission to permit respondents to an ongoing proceeding before an SRO to bypass the appropriate relief before the SRO. In the view of RS Staff, permitting such a practice would preclude the meaningful discharge by SROs of their assigned responsibilities.

ii. The Requesting Parties' Motion

[64] In response to the RS Motion, the Requesting Parties brought the Requesting Parties' Motion on March 27, 2007 to quash the RS Motion.

[65] Specifically, the Requesting Parties' Motion seeks:

(1) a declaration that the motion by RS Staff dated March 2, 2007 to quash these hearing and review proceedings is *res judicata*, an abuse of process and constitutes a collateral attack on the ruling of the RS Hearing Panel on October 10, 2006 to grant the Adjournment;

(2) further and in the alternative, a declaration that the RS Motion amounts to a request for hearing and review of the Adjournment under section 21.7 and section 8 of the Act and has not been brought within the time prescribed by section 8 of the Act;

(3) declarations under sections 21(5) and 21.1 of the Act that, in the conduct of the enforcement proceedings before the RS Hearing Panel and in the defence of these hearing and review proceedings culminating in the RS Motion, the TSX and RS Staff have engaged in practices that are abusive of the Requesting Parties' rights and contrary to the public interest;

(4) an order dismissing the proceedings before the RS Hearing Panel or alternatively dismissing the RS Motion; and

(5) an order under subsection 8(3) of the Act awarding the Requesting Parties their costs of this motion and of all or part of their costs of the proceedings before the RS Hearing Panel on a substantial indemnity basis.

[66] The Requesting Parties' Motion focuses on the fact that the Commission has an oversight function over RS and the TSX. In particular, the Requesting Parties emphasize that the Commission should exercise its oversight powers to address the following conduct referred to above:

(1) RS Staff sought an adjournment of the pending RS Proceeding against the Requesting Parties without disclosing that it intended to use the adjournment to enable the TSX to seek retroactive approval of the 2006 UMIR Amendments to the prejudice of the Requesting Parties;

(2) The TSX appears to have misled the Commission as to the facts and circumstances giving rise to the TSX Filing;

(3) RS Staff is now attempting to prosecute the Requesting Parties under two separate regulatory regimes, which amounts to a denial of natural justice because the Requesting Parties have a right, at a minimum, to certainty as to the regulatory regime under which they are being prosecuted;

(4) In the RS enforcement proceedings, RS Staff has acted in disregard of its own procedures and otherwise in a manner that is abusive of the Requesting Parties' rights. Specifically, RS Staff has failed to publish a full record of these proceedings on its website and has therefore not provided the public with a balanced understanding of all the issues in dispute. Moreover, RS Staff is obliged to deliver an offer to settle to potential respondents to an RS enforcement hearing before the proceedings are commenced. Since this is a mandatory requirement, RS Staff is obliged to make a reasonable offer to settle. RS Staff flouted this requirement by delivering an offer to settle requiring an aggregate payment from the Requesting Parties in excess of $2 million, an amount which, to the knowledge of RS Staff, was not only completely disproportionate to the conduct complained of and the resolution of similar RS enforcement matters but, if paid, would have been in excess of Northern's risk adjusted capital; and

(5) RS Staff is attempting to shield these matters from the scrutiny of a Commission panel through the RS Motion to quash the Amended Request.

[67] In addition, the Requesting Parties' Motion relies on paragraph 4 of section 2.1 of the Act, sections 8, 21(5), 21.1(4) and 21.7 of the Act and the Protocol, to support the position that the Commission has jurisdiction to conduct a hearing and review in this matter.

[68] According to the Requesting Parties, RS Staff has taken a tactical approach to prevent the Requesting Parties from pursuing their right to a hearing and review before the Commission. To support this position, the Requesting Parties rely on the unique facts and circumstances, described above, namely: (1) the TSX did not obtain the requisite approval of the UMIR Amendments from the Commission; (2) the Requesting Parties alerted RS Staff to the fact that the TSX had not obtained approval from the Commission for the UMIR Amendments; and (3) only after being alerted by the Requesting Parties, RS Staff sought an adjournment to give the TSX sufficient time to seek retroactive approval of the UMIR Amendments from the Commission and did not disclose this to the Requesting Parties or to the RS Hearing Panel.

[69] The Requesting Parties are content to pursue the proceedings related to the Amended Request before the Commission as permitted by the RS Hearing Panel when it granted the Adjournment. By contrast, the Requesting Parties submit that RS Staff was dissatisfied with the Adjournment, but nevertheless, RS Staff did not seek to appeal or review the decision to grant the Adjournment. The Requesting Parties maintain that by its conduct, RS Staff has acquiesced to the bringing of the Amended Request before the Commission. They point out that RS Staff moved to quash the Amended Request only at a much later stage.

[70] Further, the Requesting Parties submit that the Amended Request should be heard before the Commission because the RS Hearing Panel would not be able to disregard the TSX Filing even though RS Staff made the RS Concession not to rely on it for purposes of the RS Proceeding.

[71] The Requesting Parties also submit that the RS Hearing Panel does not have jurisdiction to adjudicate upon the validity of any TSX requirement including UMIR.

B. THE ISSUES

[72] In our view, there are three (3) principal questions for determination on these motions, as follows:

(1) What is the nature of the matter and the relief sought by the Requesting Parties in the Amended Request?

(2) Does the Commission have the jurisdiction to grant the relief sought by the Requesting Parties in the Amended Request?

(3) If yes, are there compelling reasons in all of the circumstances for the Commission to exercise its discretion to consider the Amended Request at this time, particularly in light of the pending RS Proceeding?

[73] In the course of his submissions, Mr. Wardle, on behalf of all parties, submitted that the following questions should be addressed by this Panel:

Issue #1 – (a) Is the TSX Filing under the Protocol moot for purposes of the regulatory proceeding between RS Staff and the Requesting Parties?

(b) Is it premature to raise issues regarding the TSX Filing and the validity of the TSX rule changes before the Commission?

Issue #2 – Is there a decision amenable to a hearing and review under sections 8 **or** 21.7 of the Act?

Issue #3 – Does the RS Hearing Panel have jurisdiction to hear the issues raised by the Requesting Parties in the Amended Request?

Issue #4 – Is RS Staff, in bringing its motion to quash, launching a collateral attack on a decision of the RS Hearing Panel?

[74] We believe that by answering the three (3) questions we have identified above, the issues from Mr. Wardle's list will be addressed as well. We summarize our responses to Mr. Wardle's list following our analysis of what we see as the three principal issues.

C. ANALYSIS

1. What is the Underlying Nature of the Matter and the Relief Sought by the Requesting Parties in the Amended Request?

[75] The Amended Request comes to us as an application to review certain decisions. However, if we were to address the issues underlying the Amended Request, it would be necessary to answer the following additional questions among others:

(i) does the TSX have the power to enact rules and policies that have retroactive effect?

(ii) has the TSX properly characterized the TSX Filing as being of an administrative nature (which pursuant to the Protocol is deemed to be approved by the Commission, and does not require formal approval by the Commission)?

(iii) did the TSX fail to properly disclose to the Commission the circumstances giving rise to the TSX Filing, and in so doing, act improperly? and

(iv) did the manner in which RS Staff sought and obtained an adjournment of the RS Proceeding and initiated the RS Motion to quash the Requesting Parties' Amended Request constitute an abuse of process, thereby affording the Requesting Parties an *in personam* remedy that the 2006 UMIR Amendments ought not to apply to them even if, by virtue of the TSX Filing, they apply to all other TSX participants?

[76] These questions are raised in the context of an existing administrative proceeding before a constituted RS Hearing Panel and are essentially raised as a defence to allegations made by RS Staff (although they have been brought as a preliminary matter). All of these issues are currently before the RS Hearing Panel pursuant to motions made by the Requesting Parties.

2. Does the Commission have the Jurisdiction to Address the Matter and to Grant the Relief Sought by the Requesting Parties in the Amended Request?

i. The Commission's Statutory Powers to Hear a Request for Hearing and Review

a. The Commission's Legislative Framework

[77] The Commission may hold a hearing and review of a decision of the Director, or a decision of a SRO such as RS. Section 8 of the Act deals with the review of decisions of the Director. That section provides:

Review of Director's decision

8. (1) Within 30 days after a decision of the Director, the Commission may notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

Same

(2) Any person or company *directly affected* by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission. [emphasis added]

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

Stay

(4) Despite the fact that a person or company requests a hearing and review under subsection (2), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

[78] Section 21.7 of the Act provides the Commission with the authority to review decisions of SROs. That section reads as follows:

Review of decisions

21.7 (1) The Executive Director or a person or company *directly affected* by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling. [emphasis added]

Procedure

(2) Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[79] In addition, section 21 of the Act provides the Commission with the power to recognize and regulate stock exchanges. Section 21 of the Act provides as follows:

Stock exchanges

21. (1) No person or company shall carry on business as a stock exchange in Ontario unless recognized by the Commission under this section.

Recognition

(2) The Commission may, on the application of a person or company proposing to carry on business as a stock exchange in Ontario, recognize the person or company if the Commission is satisfied that to do so would be in the public interest.

Same

(3) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose.

Standards and conduct

(4) A recognized stock exchange shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.

Commission's powers

(5) The Commission may, if it appears to be in the public interest, make any decision with respect to,

(a) the manner in which a recognized stock exchange carries on business;

(b) the trading of securities on or through the facilities of a recognized stock exchange;

(c) any security listed or posted for trading on a recognized stock exchange;

(d) issuers, whose securities are listed or posted for trading on a recognized stock exchange, to ensure that they comply with Ontario securities law; and

(e) any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange.

ii. Parties Submissions

a. The Requesting Parties' Submissions

[80] The Requesting Parties submit that the Commission has the jurisdiction to hear the Amended Request because a reviewable decision does in fact exist. The Requesting Parties take the position that the decision of the TSX to make and the Director to accept the TSX Filing (respectively) is a procedural decision that is contemplated by section 21.7 of the Act because it relates to a "by-law, rule, regulation, policy, *procedure*, interpretation or *practice*" of the exchange [emphasis added].

[81] The Requesting Parties submit that a decision was in fact made by the Director to accept the TSX Filing and that this is evident from the notes and correspondence of Commission Staff which were obtained by the Requesting Parties pursuant to a Freedom of Information Request.

[82] Further, the Requesting Parties submit that the Commission has the mandate under paragraph 21(5)(e) of the Act to review the rule and policy-making by SROs. According to the Requesting Parties, the Director can exercise the Commission's oversight power contemplated under paragraph 21(5)(e) as a result of the blanket order which delegates power to the Director.

[83] The Requesting Parties submit that they are directly affected by the TSX's decision to make the TSX Filing and the Director's decision to accept the TSX Filing. The Requesting Parties rely on *Re Instinet* (1995), 18 O.S.C.B. 5439, as authority that a consideration of whether a party is directly affected involves taking into account all the relevant circumstances and the nature of the decision made and the context in which it was made. The Requesting Parties submit that the question whether a party is directly affected by a decision is a highly specific inquiry, and in this matter, it is clear that the Requesting Parties were directly affected by the decision because the TSX Filing and the approval of the 2006 UMIR Amendments were specifically targeted at them.

[84] The Requesting Parties also submit that they brought their Amended Request before the Commission because they gave an undertaking to the RS Hearing Panel to do so. Thus, the Requesting Parties submit that if the Commission declined jurisdiction to hear the matter, the result would be "Kafkaesque": the Requesting Parties say, on the one hand, that the RS Hearing Panel told them to ask the Commission to address these concerns, yet, on the other, the other parties submit that the Commission should not, or can not, address these concerns.

[85] The Requesting Parties submit that the Commission is their only resort, since the RS Hearing Panel does not have the jurisdiction to adjudicate upon the validity of any exchange requirement including UMIR. The Requesting Parties say that under paragraph 13.0.8(4)(c) of the *TSE Act*, the TSX Board of Directors may only delegate the power to hold hearings to make a determination regarding discipline in matters relating to business conduct.

[86] The Requesting Parties refer us to UMIR 10.6(1), which, they argue, imposes restrictions on the jurisdiction of a RS Hearing Panel. Part 10 of UMIR, provides RS and thus RS hearing panels, jurisdiction to decide whether violations have occurred and to impose sanctions. There is no provision of UMIR requiring or permitting RS to make a determination other than determinations regarding discipline.

[87] The Requesting Parties also submit that the RS Hearing Panel is a creature of the UMIR themselves and it does not have any plenary jurisdiction. The Requesting Parties state that RS cannot declare the UMIR to be invalid because it is created by the UMIR rules and it doesn't have that power. For this reason, and in conformity with the jurisprudence, the Requesting Parties submit that the RS Hearing Panel was correct in granting the Adjournment of the RS Proceeding and to decline jurisdiction over issues respecting the validity of the UMIR Amendments including the matters that are the subject of these hearing and review proceedings. The Requesting Parties rely on *Re Taub*, [2006] I.D.A.D.C. No. 22 at paras. 22 to 24 and *Re Derivative Services Inc.*, [1999] I.D.A.D.C. No. 29 at pp. 17 and 18 ("*Re Derivative Services - IDA*") to support this position.

[88] According to the Requesting Parties, the only appropriate forum for the determination of all of these issues is the Commission or the court, and the court has already denied their application in Justice Campbell's Decision.

b. RS Staff's Submissions

[89] Counsel for RS Staff submits that the Commission does not have the jurisdiction to hear the Amended Request at this stage of the RS Proceeding. Counsel for RS Staff stresses that since the TSX Filing is not being relied upon in the RS Proceeding, the Requesting Parties are no longer "directly affected" within the meaning of section 21.7 of the Act. Essentially, counsel for RS Staff submits that without a direct effect on the Requesting Parties, there is no statutory authority to continue the proceeding before the Commission because a "direct effect" is a requirement under subsection 21.7(1) of the Act.

[90] In support of the position that there must be a "direct effect" on the applicants for the Commission to conduct a hearing and review of an RS decision, counsel for RS Staff referred us to the case of *Corp. of the Canadian Civil Liberties Assn. v. Ontario (Civilian Commission on Police Services)*, [2005] O.J. No. 3875 (Div. Ct.). Specifically, counsel for RS Staff pointed out that in the dissent in that decision, which was endorsed by the Court of Appeal for Ontario ([2006] O.J. No. 4699 (C.A.)), Justice Cunningham held that the words "directly affected" indicate "a legislative intent to further circumscribe the right to appeal" (*Corp. of the Canadian Civil Liberties Assn. v. Ontario (Civilian Commission on Police Services*, *supra* at para. 28) and in his view (and in the Court of Appeal's view), a personal and individual interest must exist. Based on that case, counsel for RS Staff submits that because there is no direct effect on the Requesting Parties since the TSX Filing is not now being relied upon, the Amended Request does not fall within the Commission's jurisdiction.

[91] In addition, RS Staff submits that the RS Hearing Panel has the jurisdiction to hear the matters raised by the Requesting Parties in the Amended Request, and that this is consistent with Justice Campbell's Decision. In support of this position, the Requesting Parties cite a number of decisions in which an RS hearing panel did determine jurisdiction and legal issues, including *In the Matter of Jason Fediuk* (Decision on Preliminary Motion), August 24, 2005 (RS Hearing Panel), *In the Matter of Credit Suisse First Boston Inc.* (Decision on Preliminary Motion to remove counsel of record), February 9, 2004 (RS Hearing Panel), *In the Matter of Steven James Regoci et al.*, April 21, 2004 (RS Hearing Panel) and *In the Matter of Louis Anthony DeJong et al.*, July 29, 2004 (RS Hearing Panel).

c. Commission Staff's Submissions

[92] Unlike RS Staff, Commission Staff does not take a position with respect to whether the Requesting Parties are "directly affected" by the TSX Filing. Instead, Commission Staff's main focus is whether a reviewable decision exists. Commission Staff takes the position that there is no decision which is properly amenable to review under section 21.7 and section 8 of the Act.

[93] Commission Staff submits that not every "decision" is an exercise of a statutory decision-making power which is subject to a hearing and review under the Act. Commission Staff say that about 450 employees work at the Commission and 550 employees work at the TSX, and they all take steps and make decisions every day. However, not all of these decisions are reviewable under section 21.7 or section 8 of the Act. In particular, Commission Staff submits that decisions made in Commission Staff's day-to-day duties are not reviewable in this manner.

[94] Commission Staff takes the position that the TSX Filing does not constitute a reviewable decision under section 21.7 of the Act because it was not made under a statutory power conferred by the Act. According to Commission Staff, section 21.7 of the Act limits the right to a hearing and review to a "decision" made by a recognized stock exchange under a "by-law, rule, regulation, policy, procedure, interpretation or practice of the exchange". Commission Staff points out that there is no mention of the Protocol in section 21.7 of the Act. As a result, section 21.7 of the Act does not apply to administrative steps/decisions taken in the rule making process under the Protocol.

[95] In addition, Commission Staff submits that the Commission's acceptance of the TSX Filing is not a decision that is contemplated under the *TSE Act* or article 12 of the TSX By-Law No. 1. This is because the Protocol does not relate to a "by-law, rule, regulation, policy, procedure, interpretation or practice of the TSX".

[96] With respect to the Director's decision to accept the TSX Filing, Commission Staff submits that it does not fulfill the definition of a decision which is set out in subsection (1) of the Act. Subsection 1(1) of the Act defines a "decision" as a "decision of the Commission or a Director, a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations". Further, Commission Staff submits that this is not a decision in the nature of registration or a decision whether to issue a prospectus receipt, which are both specifically referred to in the Act and are reviewable decisions of a Director.

[97] As well, Commission Staff submits that the Act does not contain any direct conferral of a decision-making authority on a Director with respect to the rules of a recognized stock exchange. As a result, Commission Staff contends that the Director has not exercised a statutory decision-making power which is subject to review under section 8 of the Act. The Commission has only exercised its authority under section 6 of the Act to assign the Director the power in relation to non-public interest by-laws, rules, regulations, policies and procedures, interpretations or practices of a recognized stock exchange.

[98] Commission Staff also relies on the language of Rule 7 of the *Commission Rules of Practice* (1997), 20 O.S.C.B. 1825, to support their position that a reviewable decision of a Director must be a decision made in an adjudicative context. Commission Staff argues that this is evident from the wording of Rule 7.3, which requires that the party who requests the hearing and review provide the Commission with the records, intermediate orders and the decision made …etc.

[99] While Commission Staff counsel advised that she is not aware of any cases which deal with the Commission reviewing decisions relating to a MOU, she did refer us to cases of the Alberta Securities Commission which considered the nature of staff decisions relating to whether to proceed with enforcement proceedings. (see *Re Simpson*, [2005] A.S.C.D. No. 1016 (Alta. Sec. Comm.) and *Re Ironside* [2002] A.S.C.D. No. 158 (Alta. Sec. Comm.)). These cases are discussed below.

[100] Commission Staff did acknowledge that paragraph 21(5)(e) of the Act gives the Commission residual power and overriding supervisory jurisdiction in respect of any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, and admitted in oral submissions that this subsection provides the Commission with overriding jurisdiction to consider the matters before it. Commission Staff also acknowledged that the Protocol itself refers to subsection 21(5) of the Act, and thus the Protocol does not oust the Commission's jurisdiction.

[101] In any event, Commission Staff also submits that the RS Hearing Panel does in fact have the jurisdiction to determine whether the 2006 UMIR Amendments were validly adopted. For example, Commission Staff refers to *Re Delmas* (VSE Hearing Panel Decision, dated June 30, 1994), where an exchange disciplinary panel heard and decided challenges to their jurisdiction. Staff also relies on the case of *Canadian Pacific Limited v. Matsqui Indian Band*, [1995] S.C.J. No. 1 (S.C.C.) as authority that administrative tribunals have the ability to examine the boundaries of their own jurisdiction.

d. The TSX's Submissions

[102] Counsel for the TSX submits that section 21.7 of the Act gives the Commission the jurisdiction to deal with supervision of rule enforcement. He cites, for example, decisions of the exchange such as a delisting decision, or a decision of the TSX Board of Directors which is made under a by-law, rule, regulation, policy, procedure, interpretation or practice of the TSX.

[103] However, counsel for the TSX argues that section 21.7 of the Act does not apply to decisions made in the rule-making process and that this is evident from the case-law dealing with section 21.7 of the Act. Specifically, counsel for the TSX referred us to the five grounds that permit the Commission to interfere with a decision of an exchange, which were articulated in *Re Canada Malting Co.* (1986), 9 O.S.C.B. 3566. These five grounds include whether:

(i) the exchange proceeded on some incorrect principle,

(ii) the exchange erred in law,

(iii) the exchange overlooked material evidence,

(iv) the exchange's perception of the public interest conflicts with that of the Commission, and

(v) new and compelling evidence was presented to the Commission that was not presented to the exchange.

According to counsel for the TSX, these five grounds contemplate an underlying adjudicative proceeding.

[104] Thus, in this respect, counsel for the TSX agrees with Commission Staff that there is no reviewable decision for purposes of section 21.7 of the Act. Counsel also points out that in *Re Steinhoff* (2002), 25 O.S.C.B. 8280, this Commission held that in order for a decision to be reviewable, it must be "a formal decision made after a hearing and not simply an administrative decision by Staff […]" (at para. 10). Since there was no formal decision made after a formal hearing, counsel for the TSX submits, like Commission Staff, that there is no reviewable decision for the Commission to consider.

iii. Discussion

a. Is there a Reviewable Decision in this Matter?

[105] Three elements must be present to trigger the application of section 21.7 of the Act. First, there must be a "direction, decision, order or ruling". Secondly, the direction, decision, order or ruling must be "made under a by-law, rule, regulation, policy, procedure, interpretation or practice" of the exchange. Finally, the hearing and review provision can only be invoked by a person or company "directly affected".

[106] There are also three required elements that trigger the application of section 8 of the Act. First, a person or company must be "directly affected." Second, there must be a "decision" and third, the decision must be made by a "Director."

[107] Not every decision is a statutory decision which is subject to a hearing and review under the Act. While section 21.7 limits the right to a hearing and review to a "decision" made pursuant to "any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange", section 8 limits the Commission's review to a "decision of the Director".

[108] The term "decision" is set out in subsection 1(1) of the Act, which states: a "decision means, in respect of a decision of the Commission or a Director, a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations."

[109] In *Re Steinhoff* (which related to consideration of sections 21.1(4) and 21.7 of the Act), the Commission held that in order for a decision to be reviewable, it must be "a formal decision made after a hearing and not simply an administrative decision by Staff […]" (*Re Steinhoff*, *supra* at para. 10). Notwithstanding that case, we are of the view that no decision after a formal hearing is necessary for there to be a decision that is reviewable by the Commission under these sections. At the same time, however, we agree that mere administrative decisions are not subject to review.

[110] In *Ironside*, the Alberta Securities Commission considered an appeal under section 35 of the *Alberta Securities Act* of a decision by the Executive Director not to take enforcement action. The language of section 35 is similar to section 8 of the Act. The Alberta Commission held that:

> […] the decision not to proceed with enforcement action in this case is not a decision as defined by the Act because it was not made "under a power or right conferred by this Act or the regulations (*Re Ironside*, *supra* at para. 59).

[111] In *Re Simpson*, the Alberta Securities Commission had to consider the scope of section 73.1 of the *Alberta Securities Act*, R.S.A. 2000, c. S-4, its appeal provision. In that case, the Investment Dealers Association ("IDA") decided not to conduct an investigation into a complaint filed by an investor about the conduct of his broker and the investor subsequently appealed that decision to the Alberta Securities Commission. The Alberta Commission concluded that the IDA's decision was not a "decision" subject to its review. The Alberta Securities Commission stated:

> However, subsection 1(n) is of some assistance, as it uses some of the same words as subsection 73(1). The four words "direction, decision, order, ruling" used in paragraph 1(n) are followed by the words "under a power or right conferred by this Act or the regulation". That phrasing indicates to us that each of the first four words share the concluding characteristic that it must be made "under a power or right conferred by this Act or the regulation". *Therefore, not every decision meets the definition of "decision" for purposes of the Act. Subsection 73(1) similarly limits the right of appeal to a "direction, decision, order or ruling" that is made under a "by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization. This indicates to us that the legislative intention, once again, was that not every decision made by a self-regulatory organization such as the IDA, as that term is understood in common parlance, is a "decision" that can be appealed* [emphasis added] (*Simpson*, *supra*, at para. 40).

We are of the view that this reasoning is applicable in the context of sections 8 and 21.7 of the Act.

(1) The TSX Filing

[112] With respect to the TSX Filing, we find that there was no reviewable decision by the TSX within the meaning of section 21.7 of the Act.

[113] As described above, in order to be a reviewable "decision" under section 21.7 of the Act, the decision to make the TSX Filing must have been made under a power specifically given to the TSX pursuant to a by-law, rule, regulation, policy, procedure, interpretation or practice of the TSX. The TSX decision to make the TSX Filing was not under a "by-law, rule, regulation, policy, procedure, interpretation or practice" of the TSX. Rather, the TSX made the TSX Filing pursuant to the Protocol.

[114] The Protocol is a bilateral agreement between the Commission and the TSX which forms part of the TSX Recognition Order. The Protocol describes how the Commission will conduct its oversight of the TSX's rule-making process (See *Re Mercury Partners & Co.* [2002] B.C.S.C.D No 677 at paras. 40 and 45 and *Simpson*, *supra*, at para. 42).

[115] Article 12 of TSX By-law No. 1 relates to rules and regulations made by the TSX and provides that the board may also "issue, establish, adopt, amend, repeal and re-issue, re-establish and re-adopt interpretations, procedures and practices to supplement [its] Rules and Regulations." Thus, the "by-law, rule, regulation, policy, procedure, interpretation or practice" of the TSX under which a reviewable decision is made must be one specifically promulgated by the TSX pursuant to its powers. The Protocol does not fall within this category.

[116] The Protocol establishes two different procedures for the TSX to follow to facilitate the Commission's oversight of the TSX Rules. Where a rule change is regarded by the TSX as affecting the "public interest" (within the criteria set out in the Protocol), it is classified as a "public interest" rule. Where a rule change is of a technical or housekeeping nature, it is classified as a "non-public interest" rule. The TSX Board of Directors, and not the Commission, is responsible for determining whether a rule is "public interest" or "non-public interest".

[117] In the case of a "non-public interest" rule, the TSX is simply required to "file" a copy of the proposed rule with the Commission. In that case, the cover letter to the filing must indicate the date on which the rule change is effective.

[118] The TSX regularly makes decisions in the context of its rulemaking and policy-making initiatives. The TSX must routinely make determinations under the Protocol about whether a proposed TSX rule is a "public interest" or "non-public interest" rule. These types of decisions are not decisions made by the TSX under a by-law, rule, regulation, or policy of the TSX, nor are they decisions made by the TSX under a procedure, interpretation or practice of the TSX that supplement such rules and regulations. In our view, a decision to make a filing under the Protocol at the end of an extensive policy making process has been completed is not a decision subject to review under section 21.7 of the Act.

[119] We conclude that the decision of the TSX to make the TSX Filing, including the classification of the 2006 UMIR Amendments as "non-public interest" rules under the Protocol and the selection of the effective date of the TSX Filing, are not of the nature that would be subject to review under section 21.7 of the Act. While it may be that the Requesting Parties take issue with the TSX Board of Directors' decision to make the TSX Filing and to classify the TSX Filing as "non-public interest", and its implications, we find that decision is not reviewable by this Commission under section 21.7.

(2) The Commission Staff's Acceptance of the Filing

[120] A "Director" is defined in section 1(1) of the Act as "the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director for the purpose of this definition."

[121] We note that the Requesting Parties have not been able to point to any statutory authority granted or assigned to the Director to classify TSX rules as "public interest" or "non-public interest" rules. The TSX classified the 2006 UMIR Amendments as "non-public interest" rules, not a Director of the Commission.

[122] The Act does not contain any direct conferral of decision-making authority on a "Director" with respect to the rules of a recognized stock exchange. Subsection 6(3) of the Act provides that a "quorum of the Commission may assign any of its powers and duties under this Act, except powers and duties under section 8 and Part VI, to the Executive Director or to another Director."

[123] The Commission has exercised its authority under section 6 of the Act by assigning to the Director its power with respect to recognized entities, including recognized exchanges, but only in respect of those by-laws, rules, regulations, policies and procedures, interpretations or practices that are identified by the recognized entity as being unlikely to raise public interest concerns.

[124] To determine the nature and scope of the decision-making power assigned to the Director by the Commission, one must consider the framework for the review and approval of the TSX rules by the Commission, which is set out in the Protocol. The Protocol contemplates that the TSX will file with the Commission all by-laws, rules, regulations and policy statements of general application, and amendments thereto, adopted by the TSX board. The extent to which a rule is subject to review, if any, by the Commission depends on whether the rule is treated as a "public interest" or a "non-public interest" rule, as discussed above.

[125] Non-public interest rules that are filed by the TSX with the Commission, "without Commission Staff review", are deemed to have been approved upon being filed and to be effective upon the date indicated by the TSX in the filing letter. There is no requirement that the Commission or the Director accept or approve that filing. Under the Protocol, the Director does not approve non-public interest rules and rule amendments of the TSX. Accordingly, the Director does not make a "decision" that is subject to review.

[126] We note that in *Re Meier*, [1999] LNBCSC 39 (B.C.S.C), the British Columbia Securities Commission found that the Vancouver Stock Exchange's decision to accept the filing of the technology transfer agreement (the "TTA") was subject to review as a decision made under a policy of the Exchange. The TTA was a contract between two companies made in the context of a going private transaction. The listed company agreed to sell assets that constituted all or substantially all of its property to a private company, Blackcomb Holdings Ltd.

[127] The agreement was filed, and accepted by the exchange, pursuant to Vancouver Stock Exchange Policy No. 18. "Under Policy 18, a listed company cannot complete a material transaction, as defined in the policy [such as a take-over or going private transaction], until the relevant documentation has been accepted for filing by the Exchange"(*Re Meier*, *supra* at p. 4 of 9).

[128] We note that the facts in *Re Meier* are different from those present before us. *Re Meir* dealt with a decision by the exchange to accept a filing made under its rules. There was clearly a decision required to be made by the exchange as to whether to accept that filing under its rules. In addition, that decision related to an agreement, the TTA, made between two companies. In contrast, in the present case we are dealing with the filing of an amendment to TSX rules made under an MOU, which is an agreement between the Commission and the TSX. For these reasons, we find that the case of *Re Meier* does not apply in present circumstances.

[129] We find therefore that there is no decision-making authority assigned to the Director with respect to the Protocol. Any determination made by Commission Staff in "accepting" the TSX Filing, if there was such a decision, does not constitute a reviewable decision of the Director under sections 8 or 21.7 of the Act.

(3) No "Decision" that "Directly Affects" the Parties

[130] As noted above, the term "decision" is set out in subsection 1(1) of the Act, which states that a "decision means, in respect of a decision of the Commission or a Director, a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations."

[131] The words "directly affected" are used to describe a reviewable decision in both sections 8 and 21.7 of the Act. This Commission has interpreted these words in *Re Instinet Corp.*, *supra*. In that case, the Commission stated that:

> The words "directly affected" in subsection 8(2) of the Act should be interpreted in light of all of the relevant circumstances. The interpretation to be given to the words in the context of a decision relating to a take-over bid may well be different than in the context of a registration decision. In each case under subsection 8(2), in determining standing, the Commission must look at the nature of the power that was exercised, the decision that was made, the

> nature of the complaint being made by the person requesting the hearing and review and the nature of that person's interest in the matter (*Re Instinet Corp.*, *supra* at 5446).

[132] Further, in *Re Reuters Information Services (Canada) Ltd.* (1997), 13 C.C.L.S. 66 (Ont. Sec. Comm.), the Commission emphasized that in order to be "directly affected", there must be an "immediate or automatic effect on the applicant" (at para. 29).

[133] As indicated above, we have concluded that there is no decision of the TSX that is subject to review. Accordingly, it is not necessary for us to determine whether the Requesting Parties were "directly affected" by the TSX Filing. If we are wrong about that, however, we are of the view that the determination of whether a person is "directly affected" is a question of fact, best determined by the RS Hearing Panel within the evidentiary context of the RS Proceeding.

b. The Commission's Overriding Supervisory Jurisdiction Applies

[134] Subsection 21(5) of the Act sets out the Commission's powers and oversight regarding stock exchanges. It is clear from paragraph 21(5)(e) of the Act that the Commission has a supervisory power over "any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange". Therefore, in situations where sections 8 and 21.7 of the Act do not apply, the Commission nonetheless has the ability to exercise its oversight function of a recognized stock exchange under paragraph 21(5)(e).

[135] Although we have determined that there is no reviewable decision pursuant to sections 8 or 21.7 of the Act, we recognize that this Commission does have an overriding supervisory power with respect to SROs under paragraph 21(5)(e) of the Act. We agree with Commission Staff's characterization of the Commission's powers under this paragraph, which are discussed above at paragraph 100.

[136] In our view, it is within the jurisdiction of the Commission to exercise its supervisory power under paragraph 21(5)(e) of the Act to review the decision of the TSX to make the TSX Filing.

[137] The Commission clearly has oversight jurisdiction over SROs under that section. We must determine, however, whether there are circumstances in which the Commission should exercise its discretion to exercise its oversight powers.

3. In all of the Circumstances, are there Compelling Reasons to Exercise our Discretion to Consider the Amended Request at this Time?

[138] Having found that we have the jurisdiction and the discretion to hear the Amended Request, we have to determine whether there are compelling reasons for us to exercise that discretion in all of the circumstances, at this time.

i. Are the Matters Raised in the Amended Request Moot Because of the RS Concession?

a. Is the RS Hearing Panel Bound by the RS Concession?

(1) Parties Submissions

[139] On December 7, 2006, RS Staff made the RS Concession that they would not rely on the TSX Filing for purposes of the RS Proceeding. The RS Concession was made in response to the Requesting Parties' vigorous objections regarding the TSX Filing.

[140] RS Staff takes the position that their agreement not to rely on the TSX Filing renders the Amended Request moot, so that the Commission does not have to deal with it. According to RS Staff, if there is no reliance on the TSX Filing, its effect on the validity of the UMIR Amendments is academic and hypothetical. RS Staff takes the position that the Requesting Parties have been restored to the position they were in prior to the TSX Filing.

[141] In light of the RS Concession, RS Staff takes issue with the fact that the Requesting Parties insist on continuing the process before the Commission rather than dealing with the legal issue of the validity of the UMIR Amendments before the RS Hearing Panel. In the words of counsel for RS Staff:

> […] there is no conceivable prejudice to [the Requesting Parties] if there was any to begin with arising from the filing or any of the surrounding circumstances such as the adjournment of the motion date and, in fact, [the Requesting Parties] effectively [have] been given what it asked for after it learned about the filing. [The Requesting Parties have] achieved the most success that it could really expect or hope to achieve based on the filing and that is getting the filing excluded, completely excluded, from consideration (*Commission Transcript in the matter of the TSX Inc., Market Regulations Services Inc, Northern Securities Inc., Vic Alboini, Christopher Shaule*, dated July 19, 2007 at 39:5-16).

[142] Counsel for RS Staff submits that the Requesting Parties have achieved all they wanted to achieve, that is, getting the TSX Filing excluded from consideration in determining the application of the UMIR Amendments. RS Staff submits that, by making its concession, the Requesting Parties are no longer "affected" by the TSX Filing, and that there is no longer a live controversy or a concrete dispute with respect to the TSX Filing.

[143] RS Staff submits that as a general rule, courts, as well as tribunals, should not hear matters where there is no live dispute to be settled. In support of this position, they referred us to cases where courts refused to hear matters that were held to be moot issues, including: *Coca-Cola Co. of Canada v. Matthews*, [1944] S.C.R. 385, *Moir v. Corporation of the Village of Huntingdon* (1891), 19 S.C.R. 363, and *Attorney-General for Alberta v. Attorney-General for Canada*, [1939] A.C. 177 (P.C.). They also pointed out that appeals from the Commission where the issues have become moot have been dismissed (see for example, *Ontario (Securities Commission) v. Crownbridge Industries Inc.*, [1990] O.J. No. 2299 (Gen. Div.)). These cases are discussed below.

[144] Counsel for the TSX supports the position of RS Staff on the issue of mootness, and observes that it is unclear whether the Requesting Parties' allegations of "abusive regulation" are intended to form some sort of free standing basis for relief. If so, then the TSX submits that these issues must be addressed in the first instance by the RS Hearing Panel, in accordance with Justice Campbell's Decision. If not, these issues are also moot, since they are tied to the circumstances that gave rise to, and were meant to be addressed by, the RS Concession.

[145] Commission Staff did not take any position regarding the RS Concession and the issue of mootness.

[146] The Requesting Parties maintain that there continues to be a live issue relating to whether RS Staff can actually bind the RS Hearing Panel to ignore the 2006 UMIR Amendments and the fact that the TSX made the TSX Filing. According to the Requesting Parties, the RS Hearing Panel would have a positive legal obligation to consider the TSX Filing in any event.

(2) Discussion

[147] All parties agree that *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 ("*Borowski*") is the leading case with respect to the principle of mootness. The general principle is that when there is no longer a concrete issue in dispute between the parties, then the matter becomes moot. Therefore, absent exceptional circumstances, courts and tribunals only exercise their power to resolve live disputes:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. *Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot.* The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice [emphasis added] (*Borowski*, *supra* at para. 15).

[148] Essentially, courts and tribunals should not be called upon to decide abstract issues. For example, in *Coca-Cola Co. of Canada v. Matthews*, *supra*, the Supreme Court of Canada dismissed an appeal on the basis that the issue was moot. In that case, the Court of Appeal for Ontario directed that the respondent, Matthews, recover $350 in damages and costs. Leave to appeal to the Supreme Court of Canada was granted on the basis that the appellant, Coca-Cola, made an undertaking to pay the respondent in any event the amount of the judgment and costs: The Supreme Court explained that the undertaking had the following effect: "no further *lis* exists between the parties and [this leaves] nothing for the respondent to fight over" (at p. 2 of 5). As a result, the Supreme Court determined that the matter was moot and emphasized that courts should "not decide abstract propositions of the law" (at p. 4 of 5).

[149] This principle was also articulated by the Privy Council in *Alberta v. Attorney-General for Canada*, *supra*. The Privy Council stated that it is a long-established practice not "to entertain appeals which have no relation to existing rights […]" (at p. 3 of 7).

[150] This also occurred in the case of *Moir v. Huntingdon (Village)*, *supra*. In that case, a by-law central to the matter was repealed by the Village of Huntingdon. The Supreme Court of Canada determined that if a legislative instrument upon which the dispute is based is repealed, this is a new circumstance that will resolve the dispute and make the issues moot. As a result, the Supreme Court dismissed the appeal.

[151] Further, in *Ontario (Securities Commission) v. Crownbridge Industries Inc.*, *supra*, the issue of mootness was addressed by the Divisional Court in the context of securities regulation. That case involved a dispute over the production of

documents, however, the Commission's counsel rendered the issue moot by providing the other party disclosure of the relevant documents. Thus, a new circumstance (i.e., disclosure of the documents) had the effect of rendering the issue moot.

[152] In order to determine whether an issue has become moot, a two step analysis needs to be undertaken. The first step requires a consideration of whether there remains a live, concrete dispute between the parties. If the first step is answered in the affirmative, then the second step involves determining whether it is necessary for the court or tribunal to exercise its discretion to hear the case in any event (*Borowski*, *supra* at para. 16).

[153] In applying the two step analysis test articulated in *Borowski*, we have determined that there continues to be a live concrete issue between the parties, that is, the validity of the 2006 UMIR Amendments.

[154] In our view, the RS Concession does not necessarily bind the RS Hearing Panel. The RS Hearing Panel has the ability to apply and enforce the 2006 UMIR Amendments. The TSX has specifically delegated this task to RS. Since the TSX has done so, we do not agree that RS Staff can prevent the RS Hearing Panel from considering the validity of the 2006 UMIR Amendments if the RS Hearing Panel wishes to do so. RS Staff cannot on its own volition curtail and restrict the jurisdiction of the RS Hearing Panel.

[155] It is also well established that parties by agreement cannot confer jurisdiction on a tribunal that the tribunal does not possess. Similarly, in our view, a party, by concession, cannot deprive a tribunal of its jurisdiction to hear and determine an issue. This principle is fundamental to the rule of law and to the exercise of independent decision-making authority. A court's inherent power to control its own process does not justify it in ignoring the law. In fact, a hearing panel is under an obligation to apply the law. A panel's decision on a matter requires that it be made independently and impartially and not subject to parameters established in advance by anyone, including RS Staff. As stated in *Re ATI Technologies Inc.* (2004), 27 O.S.C.B. 6859, by the Commission:

> *We must rely on the hearing panel to do its job, to do its duty, to conduct a fair hearing, to apply the law, including the rules of natural justice* that are required because of subsection 4 of section 127 of the Act. *We leave it to that panel to come to the opinion that it has to come to*; […] [emphasis added] (*Re ATI Technologies Inc.*, *supra* at para. 104).

[156] A similar principle has been articulated by the Ontario Court of Appeal for Ontario in the context of juries; "[…]the jury has no right not to apply the law that the trial judge has instructed them to apply"(*R. v. Morgentaler* (1985), 52 O.R. (2d) 353 at 434-435 (C.A.) reversed on other grounds (1998), 44 D.L.R. 385 (S.C.C.)). In the same way, a judge cannot decide to ignore the law when deciding a case.

[157] The Alberta Securities Commission noted in *Re Capital Alternatives*, 2006 ABSC 1441, that a hearing panel is obliged to decide an issue based on all of the material before it, and is not bound by the position of staff counsel. It stated that the "[…] panel is not bound to share Staff's assessment of relevance" (*Re Capital Alternatives Inc.*, *supra* at para. 19). This is of significant importance where, as in the case of an RS Hearing Panel, the adjudicative body has a public interest mandate that goes beyond the interests of the parties. It is a fundamental principle of procedural fairness in securities regulation and enforcement that the investigatory and adjudicative functions of regulatory bodies be kept separate.

[158] The RS Concession cannot bind and set the legal rules that apply during the proceeding before the RS Hearing Panel. As a result, the RS Hearing Panel may be faced with the question of the validity of the 2006 UMIR Amendments and the effect of the TSX Filing even though RS Commission Staff take the position that it will not rely on that filing. As a result, the Requesting Parties are still potentially affected by the TSX Filing and the issues raised by the Requesting Parties are not moot.

[159] We also emphasize that securities regulators exercise a public interest jurisdiction which transcends the interests of the parties. As such, even if a matter would be "moot" for a traditional court, we at least question whether it could still be appropriate for a regulator to consider an issue raised by a party from a public interest perspective.

[160] Nothing we say here is intended to require the RS Hearing Panel to consider the TSX Filing and the 2006 UMIR Amendments. The RS Hearing Panel is entitled to consider those issues that it considers relevant to the proceeding before it. For instance, the RS Hearing Panel would render this issue moot if it concludes that the UMIR Amendments are in force, in any event. All we are saying here is that RS Staff cannot by means of the RS Concession render the issue before us moot.

b. Does the RS Hearing Panel have the Jurisdiction to Deal with the Matter?

(1) The Parties' Submissions

[161] As summarized above at paragraphs 80 to 88, the Requesting Parties take the position that the RS Hearing Panel does not have the jurisdiction to consider the issues raised in the Amended Request. Accordingly, if it does not have the jurisdiction, they say that the Commission should exercise its discretion to hear the matter at this time, since they would otherwise be denied an avenue to redress the matters raised. In contrast, as set out in paragraphs 89 to 101, RS Staff and

Commission Staff submit that the RS Hearing Panel has the jurisdiction, and therefore can and should deal with the matters raised in the Amended Request, in the course of the RS Proceeding.

[162] In our view, the RS Hearing Panel has the jurisdiction to deal with the issues raised in the Amended Request, in particular, the validity of the UMIR Amendments. Further, in our view, the RS Hearing Panel is the best and most appropriate forum in which to address all of these matters, at least at first instance.

[163] *Canadian Pacific Limited v. Matsqui Indian Band* [1995] 1 S.C.R. 3 ("*Matsqui*"), the Supreme Court of Canada considered the question whether administrative appeal tribunals may entertain questions relating to their jurisdiction. In *Matsqui*, the respondents argued that jurisdictional issues can only be determined by superior courts and not by administrative bodies. At issue was whether the motions judge properly exercised his discretion to strike the respondents' application for judicial review, thereby requiring the respondents to pursue their jurisdictional challenge through the appeal procedures established by the appellant bands (i.e. pursue their application before the administrative tribunal and follow the appropriate appeal route before coming before the courts).

[164] The majority in *Matsqui* found that administrative tribunals can examine the boundaries of their jurisdiction although their decisions in this regard lack the force of res judicata (i.e. a decision of an administrative tribunal regarding jurisdiction is only binding on the parties to the dispute; it does not have the force of precedent). Decisions pertaining to jurisdiction made by administrative tribunals are reviewable on a correctness standard and will generally be afforded little deference (*Matsqui*, *supra* at para. 23).

[165] Also, in *Chalmers v. Toronto Stock Exchange*, [1989] O.J. No. 1839 (C.A.), (leave to appeal to the Supreme Court of Canada dismissed February 22, 1990, S.C.C. File No. 21710), the Ontario Court of Appeal held that a stock exchange is a domestic tribunal. As such, it is a tribunal subject to administrative law principles established in the case-law (such as *Matsqui*) and established in legislation (such as the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22).

[166] Further, in *Delmas v. Vancouver Stock Exchange* (1995), 130 D.L.R. (4th) 136 (B.C.C.A.), it was alleged that a respondent, a registered representative, committed four infractions of Vancouver Stock Exchange ("VSE") By-law 5.01. Before a VSE hearing panel convened to deal with the alleged infractions, the respondent argued that the VSE hearing panel was without jurisdiction because VSE By-Law 5.01 was void for vagueness. The VSE hearing panel dismissed the respondent's arguments and the respondent applied to the courts for judicial review of the VSE hearing panel's decision. The British Columbia Supreme Court concluded that VSE By-law 5.01, which defines infractions, was not void for vagueness and that the respondent's conduct fell within the ambit of that by-law. The British Columbia Supreme Court also determined that VSE members had the power to enact by-laws defining infractions which incorporated rules passed by the VSE Board of Governors, and that such incorporation did not amount to a wrongful subdelegation of the VSE members' powers. The respondent then appealed to the British Columbia Court of Appeal, and on the issue of jurisdiction, the Court of Appeal relied on the authority of *Matsqui* that administrative tribunals do in fact have the authority to consider jurisdictional matters. As a result, the Court of Appeal rejected the respondent's arguments and dismissed the appeal.

[167] Counsel for the TSX observes that the RS Hearing Panel is established under a statutory scheme. Specifically, section 13.0.8 of the *TSE Act* gives the TSX Board of Directors the power to govern and regulate its members. As well, subsection 13.0.8(4) of the *TSE Act* permits the TSX to delegate the power to hold disciplinary hearings. The TSX's disciplinary powers have been delegated to RS through the Recognition Order.

[168] Therefore, the *TSE Act* grants RS the power to hold hearings and make determinations regarding disciplinary matters. In addition, UMIR 10.6 sets out the RS Hearing Panel's authority and states that an RS hearing panel shall "make any determination, hold any hearing and make any order or interim order required" [emphasis added]. The inclusion of the word "any" implies that an RS Hearing Panel may make "any" determination and order, including one that deals with its own jurisdiction.

[169] We note that RS hearing panels have addressed issues relating to their jurisdiction in the past. Examples of such cases include: *In the Matter of Jason Fediuk*, *supra*, *In the Matter of Credit Suisse First Boston Inc.*, *supra*, *In the Matter of Steven James Regoci et al.*, *supra* and *In the Matter of Louis Anthony DeJong et al.*, *supra*.

[170] In summary, in our view, the RS Hearing Panel has the jurisdiction to determine the issues raised in the Amended Request.

c. Is the Amended Request Premature and Will it Fragment the RS Proceeding?

(1) Parties' Submissions

[171] Counsel for RS Staff takes the position that the issues raised in the Amended Request are premature. According to RS Staff, the RS Proceeding should be concluded before attempts are made to seek Commission review on the issues, in order to

have the benefit of a full factual record from the RS Proceeding. Further, counsel for RS Staff submits that when appeals or reviews are taken in the midst of an incomplete tribunal proceeding, this fragments and delays the whole proceeding and increases the costs to the parties.

[172] RS Staff also submits that the Commission should not be used as a "motions court" to hear and determine on an interlocutory basis issues in the midst of ongoing discipline proceedings.

[173] Counsel for RS Staff also emphasized that Justice Campbell's Decision highlighted the applicable law regarding prematurity, and submitted that the Requesting Parties' application to the Superior Court was premature (Justice Campbell's Decision, *supra* at para. 37).

[174] Counsel for RS Staff pointed out that in the past, this Commission has declined to proceed with hearing a matter where premature issues were raised. Such was the case in *Re Derivative Services Inc.* (1999), 22 O.S.C.B. 6441 ("*Re Derivative Services - OSC*"). Counsel for RS Staff submitted that in that case, the Commission dismissed the application as being premature because there were no exceptional or extraordinary circumstances present that required the Commission to deal with the motion.

[175] Commission Staff supports RS Staff's position on this issue and also relies on *Universal Settlements International Inc. v. Ontario (Superintendent of Financial Services)*, [2001] O.J. No. 4301 (Sup. Ct.) as support for a finding of prematurity because a full factual record is not yet available.

[176] Counsel for the TSX agrees with RS Staff, and emphasizes the findings made in Justice Campbell's Decision regarding fragmentation and prematurity.

[177] Needless to say, the Requesting Parties do not agree that the matters raised in the Amended Request are being raised prematurely. They submit that RS Staff misplaces reliance on Justice Campbell's Decision which, they submit, merely directed that they seek a ruling from the RS Hearing Panel regarding its jurisdiction. The Requesting Parties submit that they have complied with Justice Campbell's Decision, but find themselves now in the "Kafkaesque" position of being criticized for taking the very steps they were directed to take by the RS Hearing Panel.

[178] The Requesting Parties further submit that they are not attempting to fragment the RS Proceeding, nor are they attempting to have the Commission resolve an issue that is premature. They argue that the issues stated in the Amended Request are "ripe for determination", since the RS Hearing Panel has made a decision not to proceed until the Requesting Parties' issues are dealt with by the Commission. They add that the RS Hearing Panel was perfectly entitled, in the exercise of its discretion, to control its own process, and to defer to the Commission on these preliminary issues that pertain to its jurisdiction.

[179] The Requesting Parties submit that an application for review is not premature when the issue raised is jurisdictional in nature. Where there is a fundamental dispute about the source of the RS Hearing Panel's jurisdiction, immediate judicial review is entirely appropriate (see *Glendale Securities Inc. v. Ontario (Securities Commission)* (1996), 11 C.C.L.S. 216 (Ont. Gen. Div.). They say that it is costly, duplicative and wasteful to compel the parties to proceed with the RS Proceeding before a determination of the validity of the 2006 UMIR Amendments is made.

(2) Discussion

(i) Prematurity and Fragmentation

[180] *Ontario College of Art et al. v. Ontario Human Rights* (1993), 99 D.L.R. (4th) 738 (Ont. Gen. Div.) sets out general legal principles regarding prematurity that are applicable in this case:

> [A Court has] a discretion to exercise in matters of this nature. It can refuse to hear the merits of such an application if it considers it appropriate to do so. Where the application is brought prematurely, as alleged by the Attorney General in these proceedings, it has been the approach of the Court to quash the application, absent the showing of exceptional or extraordinary circumstances demonstrating that the application must be heard (*Ontario College of Art et al. v. Ontario Human Rights*, *supra* at page 2 of 3).

[181] Essentially, premature attempts to review tribunal decisions are routinely rejected because interrupting the proceedings prevents the first instance tribunal from properly and effectively performing its function.

[182] The Divisional Court also approved this principle in *Coady v. Law Society of Upper Canada (*2003), 171 O.A.C. 51 (Div. Ct.):

> When litigants before administrative tribunals seek the court's intervention in the midst of the litigation, the court is reluctant to do so except in very extraordinary circumstances. Experience has shown that the best course is to permit the hearings to be completed and then review the entire matter. Many apparent problems disappear in the light of further evidence, sometimes the result makes the application unnecessary (*Coady v. Law Society of Upper Canada*, *supra* at para. 9).

[183] The rationale behind not dealing with premature applications is that:

> […] it is preferable to consider issues […] against the backdrop of a full record, including a reasoned decision by the board of the tribunal. Obviously, this is usually available to the court only after the administrative body has conducted a full hearing (*Ontario College of Art et al. v. Ontario Human Rights*, *supra* at page 3 of 3).

[184] For these reasons, only in exceptional circumstances should a reviewing court or tribunal hear an application in the midst of a hearing before the first instance tribunal.

[185] We have considered the general legal principles regarding prematurity, and in this matter, we find that the issues raised by the Requesting Parties in connection with the 2006 TSX Filing are premature in the circumstances of this case.

[186] We rely on *Mitchell v. Ontario (Securities Commission)*, [1998] O.J. No. 1537 (Ont. Gen. Div.), where the Court stressed that there is a need to avoid a piecemeal approach to judicial review of administrative action. In that case, the Court held that reviewing a tribunal decision on an interlocutory motion, prior to the conclusion of the tribunal proceeding on the merits, would unduly fragment the underlying administrative proceeding, and as a result, the applications were dismissed on the basis that they were premature.

[187] We also agree that *Universal Settlements International Inc. v. Ontario (Superintendent of Financial Services)*, *supra*, is instructive. That case emphasizes the importance of deference to regulatory tribunals and the importance of having a full background consideration by the tribunal. In that case, the court stated:

> Except in the most extraordinary circumstances a court should not grant declaratory relief where the regulatory authority has not been fully engaged and does have a process for doing so. There is a danger that a court which would make a pronouncement on hypothetical facts might well undermine the policy direction of a regulatory tribunal which has not only a particular case before it, but many policy factors to consider in determining the scope and extent of appropriate regulation (*Universal Settlements International Inc. v. Ontario (Superintendent of Financial Services)*, *supra* at para. 41).

[188] We conclude that we should avoid further fragmentation of this matter and have the RS Hearing Panel address the concerns of the Requesting Parties before the matter comes to us (if at all). We note that all of the issues before us have been raised by the Requesting Parties before the RS Hearing Panel. We recognize that it is not in the public interest to fragment proceedings in general. As observed in *Re Belteco Holdings Inc.* (1997), 20 O.S.C.B. 2921, (at paragraph 1.10) often "preliminary motions can take on a life of their own", especially when the parties seek to challenge motion decisions in the courts. In those circumstances, the hearing on the merits cannot continue until the interlocutory matters have run their course. The result can be a substantial delay in having a matter heard on the merits. In our view, that result is inconsistent with conducting matters on a timely basis.

[189] Moreover, *In the Matter of A, B, C, D, E, F, G and H* (2007), 30 O.S.C.B. 6921, the Commission recently reaffirmed its position on premature applications. While that case dealt with the issue of constitutional motions, we find that the same reasoning applies in the present case – a full factual record is desirable, and often necessary, to assess the arguments raised by the parties (*In the Matter of A, B, C, D, E, F, G and H*, *supra* at para. 63).

[190] In the present circumstances, the Commission is very mindful of the fact that it should not cause further delay or fragment the RS Proceeding any further. As a result, we have determined that hearing the Amended Request is premature and it should be remitted to the RS Hearing Panel and dealt with there. We note that the Commission does have the ability to hear an application such as this under our broad oversight power of SROs under paragraph 21(5)(e) of the Act. However, we are of the view that we should not micromanage or unduly interfere with the SRO adjudicative process, especially if this could contribute to the fragmentation of this proceeding. It is our view that the issues relating to the UMIR Amendments, both in 2002 and 2006, should be addressed together before the RS Hearing Panel. Only after a determination of RS Hearing Panel is made, should a hearing and review be brought before the Commission, with the benefit of a full factual record to aid us in our determination.

[191] We are also influenced in this conclusion by the fact that, if the RS Hearing Panel concludes that the UMIR Amendments are valid and in force, it becomes unnecessary to consider the impact of the TSX Filing and the 2006 UMIR Amendments. The question of the validity of the UMIR Amendments is not before us on this application. This illustrates the desirability of dealing with all matters at one time, in the context of a full factual record.

(ii) Limited Scope

[192] Although we have concluded that we have discretion to hear the discrete and narrow issue of the validity of the 2006 UMIR Amendments pursuant to the Commission's oversight power under paragraph 21(5)(e) of the Act, we find that it would be preferable if the RS Hearing Panel were to hear the entire matter in the first instance. The fact that we have a narrow issue before us (i.e., the validity of the 2006 UMIR Amendments), and that broader interrelated issues would remain unresolved only emphasizes our view that all matters ought to be addressed at one time, in the context of the RS Hearing. As noted above, if the UMIR Amendments are validly in force, the TSX Filing and the 2006 UMIR Amendments become irrelevant.

(3) Conclusion

[193] We have concluded that to hear the matters raised by the Amended Request at this time would have the effect of fragmenting the RS Proceeding. We have decided to avoid this fragmentation by referring the matter back to the RS Hearing Panel, so that the RS Hearing Panel has the opportunity to address all issues surrounding the UMIR Amendments (in both 2002 and 2006) as a whole, in the context of all of the facts in this matter. We have found no reason to conclude that the RS Hearing Panel does not have the jurisdiction to address issues like the validity of the 2002 and 2006 UMIR Amendments (as discussed above in these reasons), and in the interest of a more efficient and timely resolution of this matter, we believe that it is appropriate to send this matter back to the RS Hearing Panel to have them consider the motions before it related to the validity of the TSX Filing and the 2002 UMIR Amendments in the context of all the issues and facts in this matter.

[194] We emphasize, however, that how the RS Hearing Panel wishes to deal with all these matters is in their discretion.

d. What Impact would the Commission's Intervention at this Time have on the Integrity of the SRO System?

(1) Parties' Submissions

[195] We recognize that the functioning of the SRO regime should not be interfered with lightly. Counsel for RS Staff argued that if the Requesting Parties succeed on the Amended Request, there is a danger that litigants will become increasingly inventive in characterizing their issues as "jurisdictional" to escape the SRO process in order to come directly to the Commission.

[196] Attempts to avoid the SRO process in order to come directly to the Commission will broaden the scope of the hearing and review process before the Commission beyond what is contemplated by the Act, and will undermine the integrity of the SRO process. According to counsel for RS Staff, this is not in the interest of efficient regulation nor is it in the public interest. We agree with that submission.

[197] Counsel for RS Staff pointed out that the Commission has chosen to permit the regulation of trading on the TSX through the vehicle of an SRO. In doing so, the Commission has concluded that it is in the public interest for such regulation (including the hearing of discipline proceedings and preliminary motions associated with them) to occur through the SRO process. Accordingly, RS Staff submits that it is not in the public interest to entertain attempts to bypass the RS process by proceeding directly to the Commission. In the words of counsel for RS Staff, "there is simply no point in having SROs if that practice is going to be permitted."

[198] It is Commission Staff's position that the Commission should have regard to and reinforce the proper functioning of the SRO regulatory regime. Specifically, Commission Staff point out that this is enshrined in paragraph 4 of section 2.1 of the Act, which states:

> 2.1 […]
>
> 4. The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
>
> […]

[199] According to Commission Staff, the recognition of SROs by the Commission is designed to utilize the expertise of SROs in achieving the goals of the Act, and this is important to the integrity of the securities regulation scheme as a whole. Commission Staff also referred us to the relevant case-law that addresses the expertise and roles of SROs.

[200] Thus, according to Commission Staff, while the Commission has an oversight function with respect to decisions of the RS Hearing Panel, it is appropriate to permit the RS Hearing Panel to carry out its adjudicative functions, and this is consistent with paragraph 4 of section 2.1 of the Act.

[201] Counsel for the TSX and the Requesting Parties did not directly address the issue regarding the integrity of the SRO process.

(2) Discussion

[202] We agree that consideration should be given to the importance of and impact upon the SRO system in making our decision. The Commission has long recognized and supported an effective SRO regime as provided under the Act, as a matter of policy.

[203] The importance of the role of SROs was explained in *Re Derivative Services – IDA*, *supra*. It was stated that:

> […] the statutory scheme is designed to harness the self-regulatory authority of the [IDA] in order to reduce the need for and avoid the costs of governmental involvement in the day-to-day regulations of the industry. Recognition as an [SRO] is premised on the expertise of an industry organization like the [IDA] which can establish standards of business conduct for its members, frequently higher than those that would be imposed by the OSC, and which may bring to bear on technical issues and other matters a deeper understanding of industry practices, both in its rulemaking and in disciplinary and approval proceedings. The legislative scheme is also premised on a greater likelihood of compliance by members and their personnel with rules established and enforced by the private sector through its self-regulatory activities, but subject to regulatory supervision by the OSC. The theory is that the industry through SROs like the [IDA], will carry on the necessary regulatory activities with the government riding shotgun to ensure that they remain on the correct path (*Re Derivative Services- IDA*, *supra* at pp. 13-14 of 23).

[204] This quote recognizes that SROs, such as the IDA, Mutual Fund Dealers Association and RS have an important role to play as a specialized entities to regulate the activities of their members. The expertise of SROs was also recognized by the Commission in *Re Security Trading Inc.* (1994), 17 O.S.C.B. 3188. In that matter, the Commission stated that:

> *While the Act does not require that the Commission defer to the Exchange, there are reasons for doing so* in a case such as this involving the suitability of a firm for membership, particularly when the suitability relates to compliance with the capital rules of the Exchange [emphasis added] (*Re Security Trading Inc.*, *supra* at para. 40).

[205] Clearly, SROs have an essential role to play in the regulation of the capital markets. Consequently, the mandate of SROs and the manner in which they pursue it, should be respected and supported. SROs are often best suited to deal with the issues put before them, and unnecessary appeals and motions to other tribunals should not be permitted to bypass the SRO jurisdiction.

[206] As we have said above, the Commission should not lightly interfere with or interject itself (or be interjected) into an SRO adjudicative matter. In particular, we are of the view that we should do so prior to the conclusion of an SRO adjudicative process, only in the rarest of occasions. In our view, the circumstances before us do not warrant doing so.

e. Would the Commission's Involvement Assist in Advancing Matters?

[207] In considering all of the events that led up this hearing before the Commission, we are very concerned with the delays that have occurred and the length of time it is taking to have the hearing on the merits in this matter proceed.

[208] We note that the RS Proceeding deals with conduct which took place between January 2003 and August 2005. The Statement of Allegations of RS Staff was issued in August 20, 2005, and subsequently amended on February 6, 2007. We are now in the autumn of 2007 and a date has not yet been set for the hearing on the merits before the RS Hearing Panel.

[209] The RS Proceeding has been the subject of delays and adjournments. First, there was the application to the Superior Court before Mr. Justice Campbell. Once that matter was settled and the parties returned to the RS Hearing Panel, then there was the adjournment to deal with the Requesting Parties motion regarding the validity of the UMIR. Then, when faced with the issues of the validity of the TSX Filing and the 2006 UMIR Amendments, the RS Hearing Panel adjourned the RS Proceeding *sine die* in order to give the Requesting Parties the opportunity to bring the Amended Request.

[210] Since the matter has come before the Commission, there have been additional delays. We have not considered the substance of the Amended Request because RS Staff has asked us to quash it. Given the complexity of the issues raised, further delays have ensued as a result of our need to consider the matter and to write and publish these reasons.

[211] If we were to agree to hear the substance of the Amended Request, further delays would ensue to allow parties to schedule the hearing, to finalize written material, to argue the application and for us to consider a decision and written reasons. Given the seriousness of the issues at stake, and the potential consequences to the parties, an appeal or judicial review could very well be sought by one of the affected parties. All in the absence of any hearing on the merits.

[212] It is in the public interest to conduct proceedings in a timely manner. This sends a message to the public and market participants that securities laws are being appropriately and effectively enforced. The Commission has the mandate to protect the public and foster confidence in the capital markets and this is achieved in part by ensuring that the regulatory process, is conducted in an efficient and timely manner both by it and within the SRO system.

[213] We are of the view that the Commission's intervention in this matter at this time would not advance matters. In fact, it would likely have the effect of giving rise to further delay and compromise the integrity of the SRO adjudicative process.

[214] This is another reason why we are of the view that this matter should be remitted back in its entirety to the RS Hearing Panel before this Commission considers any of the issues raised in the Amended Request. This will prevent further fragmentation of this matter and will ensure that if any decision by the RS Hearing Panel is appealed in the future, there will be a full factual record from that tribunal available to the Commission or court.

f. Is Intervention Necessary to Prevent Abuse?

[215] The Requesting Parties assert that the Commission's intervention is necessary to remedy and prevent abuse by RS Staff. The Requesting Parties submit that RS Staff advised neither the RS Hearing Panel nor the Requesting Parties of the intended TSX Filing before it was made. They claim they were misled in this regard and that the result is an abuse of process.

[216] The Requesting Parties also submit that the RS Motion is a collateral attack on the Adjournment, because it was not appealed within the time limit prescribed in subsection 8(1) of the Act. According to the Requesting Parties, limitation periods for appeals must be strictly adhered to. They rely on the Commission's decision in *Re Derivative Services – OSC*, *supra*, in support of this position, where the Commission stated, "Canadian courts have frequently recognized that administrative bodies must strictly adhere to the limitation periods provided in their empowering legislation where there is no express power to extend the same" (at para 35).

[217] Further, the Requesting Parties take the position that RS Staff is essentially relitigating the questions which the RS Hearing Panel determined, and reflected in the Adjournment. The Requesting Parties take the position that the relief requested in the RS Motion contradicts the findings of the RS Hearing Panel reflected in the Adjournment, which was not appealed or contested. In their view, the RS Motion seeks relief that is inconsistent with a previous disposition by a competent tribunal (i.e. the RS Hearing Panel).

[218] In RS Staff's view, the Requesting Parties' characterization of the RS Motion as a collateral attack on the Adjournment is incorrect as a matter of law. RS Staff maintains that because of the RS Concession, the TSX Filing is not being relied upon and the reason for the Amended Request before this Commission is moot. Thus, there is no collateral attack on the decision of the RS Hearing Panel.

[219] Counsel for RS Staff referred us to a number of cases that address the concept of collateral attack and support the position that collateral attack also applies to orders and rulings from administrative tribunals (see for example, *R. v. Consolidated Mayburn Mines Ltd.* (1998), 158 D.L.R. (4th) 193 at 217 (S.C.C.)).

[220] With respect to the TSX Filing, while maintaining that RS Staff's actions were not abusive, counsel for RS Staff admits that RS Staff was aware of the TSX Filing, and RS Staff was kept generally apprised of the status of the TSX Filing. Specifically, counsel for RS Staff stated:

> We do not dispute that RS was aware that the TSX intended to do the filing. We do not dispute that in fact RS fully expected that it would rely on the filing if it was in fact completed by the time the then pending motion before the RS hearing panel was heard, and we do not dispute that the original motion before the RS hearing panel was adjourned for a month on consent at RS's request when RS was aware of those facts and [the Requesting Parties were] not (*Commission Transcript*, dated July 19, 2007 at 7:13-21).

[221] Further, counsel for RS Staff made the following admission during the hearing:

> Now, in hindsight and with the benefit of knowing the steps that have been taken since then, I have no difficulty in saying that it would have been preferable had [the Requesting Parties] been made aware of those developments, and we wish in fact that we kept [the Requesting Parties] more fully apprised at that time. We do, however, dispute that there was anything misleading or untoward that was done (*Commission Transcript*, dated July 19, 2007 at 7:22 to 8:3).

[222] Counsel for RS Staff explained that it originally requested an adjournment before the RS Hearing Panel because further time was legitimately required to properly respond to the new and complex legal issues raised in this matter. In particular, the Requesting Parties Original Motion before the RS Hearing Panel raised six issues, one of which dealt with the RS Hearing Panel's jurisdiction to enforce the UMIR even though the TSX allegedly did not adopt the UMIR in accordance with the Protocol.

RS Staff required additional time to deal with this specific issue. Therefore, in RS Staff's view, the purpose of the Adjournment was not primarily to deal with the TSX Filing. In addition, the Adjournment was sought to accommodate RS counsel's vacation.

[223] Counsel for RS Staff also takes the position that the circumstances surrounding the TSX Filing are not abusive. Counsel for RS Staff points out that the Requesting Parties' allegations of abuse mainly take the form of submissions in a factum, and are not evidence. As a result, there is no complete record upon which to base any finding of abuse, and it would be a serious error at this time to make any such finding regarding abuse. Further, counsel for RS Staff emphasized that the RS Hearing Panel would be the proper tribunal to deal with the Requesting Parties' allegations of abuse.

[224] We agree that if the Requesting Parties wish to advance the allegations of abuse surrounding the TSX Filing, that is best dealt with by the RS Hearing Panel in the context of all of the facts which will come out at the RS Proceeding.

[225] With respect to the Adjournment, in reviewing the transcript of the motion before the RS Hearing Panel, we note that the Chair expressed concern whether the RS Hearing Panel could make a ruling that binds the Commission (*RS Hearing Panel Transcript*, dated October 10, 2006 at 14:12). Specifically, the Chair of the RS Hearing Panel expressed the following concern:

> But what we decide or don't decide isn't going to have any effect whatever on the right of the Ontario Securities Commission to make its own decision. […] I don't think that we have any persuasive, legally persuasive right or jurisdiction that would justify us saying, well, this is our opinion and – which could by the way, be adverse to you (*RS Hearing Panel Transcript*, dated October 10, 2006 at 32:3-10).

[226 In response to the parties' arguments on the issue of retroactivity of the 2006 UMIR Amendments, the Chair of the RS Hearing Panel stated that, "those are challenges I think you have to make to the [Commission]" (*RS Hearing Panel Transcript*, dated October 10, 2006 at 16:8).

[227] Further, the Chair of the RS Hearing Panel also stated:

> In the final analysis it's [a Commission] decision which, of course, may go on to the Divisional Court, etcetera, but it relieves us of the burden and everyone else if the time involved in going through a hearing and making a decision that somebody else has the final authority to make, regardless of what we do or whether or not we do anything (*RS Hearing Panel Transcript*, dated October 10, 2006 at 25:24 to 26:5).

[228] Essentially, the Chair of the RS Hearing Panel appears to have been of the view that the issues raised by the Requesting Parties would be best determined by the Commission as a supervisory body.

[229] Our understanding from the RS Hearing Panel transcript and from submissions made to us, is that the Adjournment was the result of a request by the Requesting Parties to allow them to follow up on the Letter to the Director, sent to the Commission's Director of Capital Markets, and, if necessary, to take proceedings before the Commission.

[230] As a result, the RS Hearing Panel concluded in its oral ruling, that:

> […] there is no valuable or pragmatic purpose to be achieved by proceeding with matters that ultimately will be decided by the Ontario Securities Commission.
>
> Proceeding with the argument today will entail a great deal of expense to the respondents, whether or not they are successful, and regardless of the ruling that this panel makes on either, both the motions, the ultimate decision lies with a higher authority, and in these circumstances the order of the panel is that this matter, motions and everything else, be adjourned sine die […] (*RS Hearing Panel Transcript*, dated October 10, 2006 at 40:6-19).

[231] Overall, the exchange and comments of the RS Hearing Panel surrounding the Adjournment indicates that it was concerned about deciding an issue that would ultimately have to be decided by the Commission. The Adjournment was given in the context of the pending request by the Requesting Parties for intervention from the Commission's Director of Capital Markets.

[232] In all of the circumstances, we do not agree that the matters being raised in the Amended Request should be brought before the Commission before a review of those matters before the RS Hearing Panel. We are of that view for the reasons discussed above.

[233] The case law clearly establishes that a collateral attack should not be permitted where the legislature has clearly prescribed an appeal process and the party seeking to attack the decision refuses to make use of that appeal process. The applicable legal principle is that the relitigation of issues in another forum should be avoided when an appeal process is available (*Toronto (City) v. Canadian Union of Public Employees (C.U.P.E), Local 79* (2003), 232 D.L.R. (4th) 385 (S.C.C.) at para. 52).

[234] This principle was also articulated in *R. v. Wilson*, (1983) 4 D.L.R. (4th) 577:

> It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. Where appeals have been exhausted and other means of direct attack upon a judgment or order, such as proceedings by prerogative writs or proceedings for judicial review, have been unavailing, the only recourse open to one who seeks to set aside a court order is an action for review in the High Court where grounds for such a proceeding exist. Without attempting a complete list, such grounds would include fraud or the discovery of new evidence (*R. v. Wilson*, *supra* at 597).

[235] When a statute provides an appeal route, that route must be followed. In the present case, the Act does provide an appeal or review process route; pursuant to sections 8 and 21.7 of the Act, decisions of the Director or SROs can be brought before the Commission for a hearing and review. This appeal/review structure provided by the Act should be adhered to.

[236] We agree with the Requesting Parties, that if RS Staff was challenging the Adjournment, then RS Staff should have brought an application for review of that decision within the statutory framework, prior to the expiration of the limitation period. In other words, if the only issue argued by RS Staff was that the RS Hearing Panel was wrong to grant the adjournment, then the RS Motion would be a collateral attack on the decision to grant the Adjournment.

[237] However, this is not what we understand RS Staff is arguing before us. RS Staff recognizes, and urges us to recognize that the RS Hearing Panel's decision to grant the Adjournment is independent of the question whether the Commission should hear or decline to hear the Amended Request. The position taken in the RS Motion is that we, as the Commission, should not hear the matter for jurisdictional and other reasons. This is not the same thing as challenging the Adjournment. To the extent that RS Staff's arguments are directed at other issues, including our jurisdiction, mootness, fragmentation, … etc., we do not see the RS Motion as a collateral attack on the Adjournment. RS Staff counsel is not challenging the Adjournment; they are challenging the appropriateness of our consideration of the Amended Request.

D. ONCLUSION

[238] Based on our discussion and analysis above, we answer Mr. Wardle's list of questions as follows:

Issue #1 – (a) Is the filing by the TSX under the Protocol moot for purposes of the regulatory proceeding between RS and the Requesting Parties?

Ans: No, the issues are not moot. We have concluded that the issues raised in the Requesting Parties' Amended Request are potentially live issues. A court or tribunal cannot be bound by an agreement of legal counsel not to advance a relevant legal issue.

(b) Is it premature to raise issues regarding the filing and the validity of the TSX rule changes before the Commission?

Ans: Yes, it is premature to raise issues regarding the 2006 UMIR Amendments before the Commission in the absence of a consideration of the relevant issues by the RS Hearing Panel. Accordingly, the matter should be remitted back to the RS Hearing Panel.

Issue #2 – Is there a decision amenable to a hearing and review under sections 8 and 21.7 of the Act?

Ans: We conclude that no reviewable decisions were made by the TSX for the purposes of sections 8 or 21.7 of the Act. However, we recognize that the Commission has a general oversight power pursuant to paragraph 21(5)(e) of the Act, but we have chosen not to exercise our oversight powers in the circumstances, at this time.

Issue #3 – Does the RS Hearing Panel have jurisdiction to hear the issues raised by the Requesting Parties on this hearing and review?

Ans: Yes, in our view, the RS Hearing Panel has the jurisdiction to deal with the jurisdictional issues regarding the adoption and validity of the 2002 and 2006 UMIR Amendments, in the context of the RS Hearing.

Issue #4 – Is RS, in bringing its motion to quash, launching a collateral attack on a decision of the RS Hearing Panel?

Ans: No, the RS Motion does not constitute a collateral attack on the decision of the RS Hearing Panel to grant the Adjournment. The RS Motion is directed at the Commission's jurisdiction and discretion as opposed to the Adjournment itself.

[239] In view of the circumstances, we do not find that it is appropriate for us to exercise our overriding supervisory powers pursuant to paragraph 21(5)(e) of the Act to hear the discrete and narrow issue of the validity of the TSX Filing and the retroactive application of the 2006 UMIR Amendments. Instead, but without in any way interfering with the RS Hearing Panel's discretion to control its own process and to deal with the matters on the basis it considers appropriate, we are of the view that the issues raised by the Amended Request would best be addressed in the first instance by the RS Hearing Panel.

[240] Therefore, we are strongly of the view that it would be preferable that the issues raised by the Requesting Parties in the Amended Request be heard in one proceeding before the RS Hearing Panel. If any of the issues raised in the Amended Request remain after the conclusion of the RS Hearing, the Commission is at liberty to consider them at that time.

Dated at Toronto on this 23rd day of October 2007.

"Lawrence E. Ritchie"

"James E. A. Turner"

"Harold P. Hands"

SCHEDULE "A" – Excerpts from the Protocol (1997), 23 O.S.C.B. 5683

3. *Prior Notice of Significant "Public Interest" Rules*

Where the Exchange is developing a "pubic interest" Rule that the Exchange anticipates will result in a significant change in Exchange policy, amendments to a significant number of Exchange Rules or may be the subject of significant public comment as a result of publication, the Exchange shall notify Commission staff in advance in writing. The purpose of such prior notification is to prepare Commission staff so that they can react in a timely way to the proposal upon filing. Prior notification shall not be interpreted by Commission staff as an opportunity to participate in Exchange policy development.

4. *Publication of "Public Interest" Rules for Comment*

All "public interest" Rules approved by the Exchange's Board of Governors shall be published for comment in the OSC Bulletin for a 30-day comment period. Commission staff shall use their best efforts to ensure publication of "public interest" Rules in the issue of the OSC Bulletin immediately following filing of the "public interest" Rule with the Commission. The Exchange shall also publish a Regulatory Notice regarding the "public interest" Rule.

Responses to all requests for comments shall be directed to the Exchange, with copies to the Commission. The Exchange shall provide the Commission with a summary of all comments and the Exchange's responses to same, which summary shall be published in accordance with sections 5 and 6.

5. *Material Revisions to "Public Interest" Rules*

Any "public interest" Rule which is revised subsequent to its publication for comment in a way that has a material effect on the Rule's substance and/or effect shall be published in the OSC Bulletin and in an Exchange Regulatory Notice for a second 30-day comment period. The request for comment shall include the Exchange's summary of comments and responses thereto together with an explanation of the revision to the Rule and the supporting rationale for the amendment.

6. *Publication of Notice of Approval*

Notice of Approval of both "public interest" and "non-public interest" Rules shall be published in the OSC Bulletin, in addition to Exchange Notices. The Notice of Approval shall provide a short summary of the essence of the Rule prepared by the Exchange. All such notices relating to "public interest" Rules shall also include the Exchange's summary of comments and responses thereto.

7. *Timing of Commission Staff Review of "Public Interest" Rules*

Commission staff shall use their best efforts to conduct their initial internal review of all "public interest" Rules during the 30-day request for comment period. (This section does not, in any way, restrict the amount of time that may be necessary for Commission staff to consider any comments received during the comment period or effect the effective date of "public interest" Rules under subsection 8.2.)

[…]

8.1 *Effective Date – "Non-Public Interest" Rules*

"Non-public interest" Rules shall be filed with the Commission and, without Commission staff review, shall be deemed to have been approved upon being so filed and will be effective upon the date indicated by the Exchange in the filing letter. Commission staff may periodically review "non-public interest" filings of the Exchange to audit the appropriateness of the categorization of such filings. The Exchange shall be notified in writing of the Commission's findings on any such audit.

8.2 *Effective Date - "public interest"*

(1) "public interest" Rules shall be effective upon the earlier of:

(a) notification from the Commission that the Rule has been approved; and

(b) (i) if no comments are received, 20 business days after the end of the public comment period,

(ii) if comments are received, 30 business days after delivery to the Commission of the Exchange's summary of comments and responses thereto, or

(iii) if a Rule is published for further comments under section 5, 30 business days after delivery to the Commission of the Exchange's summary of those further comments and responses thereto,

unless the responsible staff person at the Commission has notified the Exchange within that period that further information regarding the nature, purpose or effect of the Rule is required in order for the Commission to form a reasoned judgment concerning the matter.

(2) The Exchange may make "public interest" Rules effective immediately upon adoption by the Board of Governors where the Board determines that:

(a) confidentiality prior to introduction is necessary to protect proprietary commercial information such as new product or service design; or

(b) there is an urgent need to implement the Rule forthwith because of a substantial risk of material harm to investors, members, the Canadian Investor Protection Fund or the Exchange itself.

Should the Exchange believe that immediate implementation is appropriate, Exchange staff shall so advise Commission staff in advance of the Exchange publishing the Rule and filing it with the Commission. Such notice shall be in writing and shall include analysis in support of the need for immediate implementation.

Any such Rules shall be effective until such time as the Commission makes its decision with respect to approval. Although effective immediately, such "public interest" Rules shall still be published for comment, and subsequently be reviewed and considered for approval by the Commission. If the Commission decides not to approve any such Rule in a form agreeable to the Exchange, the Exchange shall forthwith amend the Rule, in a manner satisfactory to the Commission, or repeal it.

SCHEDULE "B" – Excerpts from the *TSE Act*, R.S.O. 1990, c. T.15

Powers of the board

13.0.8 (1) The board of directors has the power to govern and regulate,

(a) the exchange;

(b) the partnership and corporate arrangements of the members of the continued Corporation and other persons or companies authorized to trade by the exchange, including requirements as to financial condition;

(c) the business conduct of members of the continued Corporation and other persons or companies authorized to trade by the exchange and of their current and former directors, officers, employees and agents and other persons or companies currently or formerly associated with them in the conduct of business, but only in respect of their business conduct while employed or associated with a member of the continued Corporation; and

(d) the business conduct of former members of the continued Corporation and other persons or companies formerly authorized to trade by the exchange and of their current and former directors, officers, employees and agents and other persons or companies currently or formerly associated with them in the conduct of business, but only in respect of their business conduct while a member of the continued Corporation or while employed or associated with a member of the continued Corporation.

By-laws, etc.

(2) In the exercise of the powers set out in subsection (1) and in addition to its power to pass by-laws under the *Business Corporations Act*, the board of directors may pass by-laws, make or adopt rulings, policies, rules and regulations and issue orders and directions as it considers necessary, including the imposition of penalties and forfeitures for the breach of any such by-law, ruling, policy, rule, regulation, order or direction.

Immediate restriction or suspension

(3) If the board of directors orders the restriction or suspension of the privileges of any person or company before a hearing of the matter is held, the order shall provide that the restriction or suspension shall be imposed only where the board of directors considers it necessary for the protection of the public interest and that the restriction or suspension shall expire 15 days after the date on which the order was made unless a hearing is held within that period of time to confirm or set aside the order.

Delegation of powers

(4) The board of directors may by order delegate to one or more persons, companies or committees the power of the board of directors,

(a) to consider, hold hearings and make determinations regarding applications for any acceptance, approval, registration or authorization and to impose terms and conditions on any such acceptance, approval, registration or authorization;

(b) to investigate and examine the business conduct of members of the continued Corporation, former members of the continued Corporation and other persons or companies referred to in clauses (1) (c) and (d); and

(c) to hold hearings, make determinations and discipline members of the continued Corporation, former members of the continued Corporation and other persons or companies referred to in clauses (1) (c) and (d) in matters related to business conduct.

Same

(5) A delegation made under subsection (4) may provide that it is subject to specified limitations, restrictions, conditions and requirements.

Transition

(6) Any by-laws or rulings made, policies, rules or regulations adopted and orders or directions issued by the Corporation under section 10 of this Act, as it reads on the day before the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999* receives Royal Assent, continue in force, with necessary modifications, until amended or repealed or revoked by the continued Corporation.

Same

(7) Any consideration, hearing, investigation or examination begun under section 10 of this Act, as it reads on the day before the More Tax Cuts for Jobs, Growth and Prosperity Act, 1999 receives Royal Assent, may be continued under this section and the continued Corporation stands in the place of the Corporation with respect to such matter.

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
TVI Pacific Inc.	24 Oct 07	05 Nov 07		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
San Anton Resource Corporation	04 Oct 07	17 Oct 07	17 Oct 07	24 Oct 07	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent 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	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		
iPerceptions inc.	06 Sept 07	19 Sept 07	19 Sept 07		
TVI Pacific Inc.	17 Aug 07	30 Aug 07	30 Aug 07		24 Oct 07
VVC Exploration Corporation	04 Jun 07	15 Jun 07	15 Jun 07		
Tudor Corporation Ltd.	03 Oct 07	15 Oct 07	16 Oct 07		

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
San Anton Resource Corporation	04 Oct 07	17 Oct 07	17 Oct 07	24 Oct 07	

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
10/01/2007	3	American Tower Corporation - Notes	10,924,100.00	N/A
09/27/2007	65	Arcan Resources Ltd. - Common Shares	10,395,000.00	N/A
09/15/2007 to 09/25/2007	2	Arden Park Estates Limited Partnership - Limited Partnership Units	120,000.00	120,000.00
08/30/2007	5	Ark Financial Holdings Ltd. - Common Shares	600,000.00	240,000.00
10/03/2007	37	ASG Collingwood Limited Partnership - Limited Partnership Units	1,519,000.00	1,519.00
10/03/2007	43	ASG Limited Partnership No. 28 - Limited Partnership Units	2,169,000.00	2,169.00
10/03/2007	24	ASG Limited Partnership No. 45 - Limited Partnership Units	1,410,000.00	1,410.00
10/03/2007	6	ASG Targetech Limited Partnership - Limited Partnership Units	465,000.00	340.00
09/27/2007	5	Augen Gold Corp. - Common Shares	225,000.00	450,000.00
10/10/2007	1	Axela Biosensors Inc. - Common Shares	2,000,000.00	2,834,646.00
09/20/2007	218	B2Gold Corp. - Common Shares	7,435,500.00	18,588,750.00
10/02/2007	19	BA Energy Inc. - Common Shares	1,011,829.00	144,547.00
09/27/2007	2	Babcock & Brown Air Limited - Common Shares	4,268,190.50	185,000.00
09/17/2007	12	Bank of America - Notes	399,632,000.00	N/A
08/23/2007	6	Benton Resources Corp. - Common Shares	27,000.00	60,000.00
09/19/2007 to 09/20/2007	3	Benton Resources Corp. - Common Shares	26,900.00	30,000.00
09/21/2007	1	Big Deal Games Inc. - Units	1,500,000.00	714,285.00
09/14/2007 to 09/28/2007	6	Bison Income Trust II - Units	734,832.20	73,483.22
09/19/2007	23	Buchanan Renewable Energies Inc. - Units	2,120,141.75	8,480,567.00
09/28/2007	1	Chrysler Lease Trust - Notes	36,472,640.24	N/A
09/01/2006 to 08/31/2007	3	Citi Institutional Liquidity Fund plc - Common Shares	104,518,043.78	104,518,043.78
09/19/2007 to 09/29/2007	110	Cityzen Properties Limited Partnership - Limited Partnership Units	6,495,500.00	N/A

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/28/2007	9	Clearly Canadian Beverage Corporation - Notes	9,360,000.00	N/A
09/20/2007	20	Coyote Copper Inc. - Common Shares	241,125.00	964,500.00
10/05/2007	2	Cross Oilsands Contracting Ltd. - Common Shares	500,000.00	125,000.00
06/20/2007	4	Diaphonics Inc. - Debentures	1,000,000.00	N/A
10/04/2007	3	Endurance Gold Corporation - Common Shares	7,500.00	30,000.00
09/16/2007	4	Equimor Mortgage Investment Corporation - Common Shares	256,000.00	N/A
09/17/2007	1	Excalibur Limited Partnership - Limited Partnership Units	412,320.00	1.45
12/29/2006	13	FASTrainer Limited Partnership - Limited Partnership Units	350,000.00	7.00
10/09/2007	1	First Leaside Partners Limited Partnership - Notes	200,000.00	200,000.00
10/05/2007	2	First Leaside Select Limited Partnership - Units	124,391.63	126,775.00
10/04/2007 to 10/05/2007	2	First Leaside Visions Limited Partnership - Units	50,000.00	50,000.00
09/17/2007 to 09/26/2007	90	Fisgard Capital Corporation - Common Shares	808,738.12	495,908.00
09/25/2007	1	GMO Developed World Equity Investment Fund PLC - Units	98,602.56	2,994.96
09/28/2007	1	GMO International Opportunities Equity Alloc Fund-III - Units	82,414.49	3,354.44
10/05/2007	23	Golden Dawn Minerals Inc. - Flow-Through Shares	497,600.00	731,250.00
08/15/2007	58	Golden Predator Mines Inc. - Warrants	1,815,000.00	1,780,000.00
10/03/2007	1	Grupo Senda Autotransporte, S.A. de C.V. - Notes	4,980,500.00	1.00
09/19/2007	1	Hinterland Metals Inc. - Flow-Through Shares	182,000.00	1,300,000.00
09/07/2007 to 09/17/2007	15	IGW Properties Real Estate Investment Trust - Trust Units	755,517.36	726,459.00
09/27/2007	9	Innovative Hydrogen Solutions Inc. - Units	285,000.00	285.00
09/26/2007 to 09/30/2007	80	Investicare Seniors Housing Corp. - Units	3,606,250.00	144.50
10/05/2007	30	IPICO Inc. - Units	8,000,205.00	6,956,700.00
09/21/2007	1	Kernow Resources & Developments Ltd. - Common Shares	9,000.00	50,000.00
10/03/2007	2	Kilmer Capital Fund II L.P. - Limited Liability Interest	30,000,000.00	N/A
09/30/2007	11	Kingwest Avenue Portfolio - Units	49,970.60	1,473.96
10/10/2007	1	Knopp Neurosciences Inc. - Preferred Shares	24,535.00	25,000.00
10/04/2007	19	KWG Resources Inc. - Units	500,000.00	10,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/19/2007	1	Lehman Brothers Venture Partners V L.P. - Limited Partnership Interest	2,500,000.00	N/A
09/27/2007	23	Liberty Mines Inc. - Common Shares	11,398,575.00	4,000,000.00
09/24/2007	40	Limited Partnership Land Pool 2007 - Limited Partnership Units	1,592,860.00	1,622,000.00
09/17/2007	2	Lounor Exploration Inc. - Common Shares	74,000.00	400,000.00
05/30/2007	8	Lyndell Chemical Company - Notes	8,757,000.00	8,757,000.00
10/02/2007	1	Mantis Mineral Corp. - Common Shares	25,000.00	222,223.00
10/04/2007	59	Merrill Lynch Canada Finance Company - Special Trust Securities	4,786,848.50	N/A
09/05/2007 to 10/01/2007	11	Nechako Minerals Corp. - Common Shares	505,000.00	2,525,000.00
10/01/2007	1	Nordic Oil and Gas Ltd. - Units	102,000.00	600,000.00
07/04/2007	1	Nortec Ventures Corp. - Flow-Through Shares	500,000.00	2,000,000.00
09/25/2007 to 09/27/2007	35	Nstein Technologies Inc. - Units	2,994,050.00	3,529,411.76
09/30/2007	22	OptiSolar Inc. - Preferred Shares	20,110,275.00	N/A
10/03/2007	15	Pacrim Dartmouth Limited Partnership - Limited Partnership Units	585,000.00	585.00
04/19/2007 to 09/07/2007	55	Paleon Oil & Gas Ltd. - Units	2,155,000.00	N/A
06/21/2007 to 06/22/2007	30	Plazacorp Partners III Fund - Trust Units	5,315,900.00	50,459.00
09/30/2007	18	Prestigious Properties Four Limited Partnership - Limited Partnership Units	1,664,750.00	1,768.00
10/09/2007	5	Prize Mining Corporation - Common Shares	541,310.04	2,004,852.00
09/27/2007	1	Prosys Tech Corporation - Common Shares	900,000.00	4,500,000.00
09/30/2007	15	Prestigious Capital Ltd. - Bonds	480,000.00	N/A
10/11/2007	36	Ritca Corporation - Common Shares	1,972,254.80	24,984,422.00
09/26/2007 to 10/03/2007	105	Saber Energy Corp. - Common Shares	45,549,620.40	N/A
09/21/2007	38	SeaBright China Special Opportunities Fund II, L.P. - Limited Partnership Interest	93,047,059.53	18,580,099.05
10/01/2007	4	Serrano Energy Ltd. - Units	3,500,000.00	700,000.00
10/05/2007	1	Sextant Strategic Opportunities Hedge Fund LP - Units	50,000.00	1,728.40
10/03/2007	33	Simcoe Development Fund Limited Partnership - Limited Partnership Units	2,650,000.00	2,650.00
09/19/2007	34	Sunshine Oilsands Ltd. - Units	10,066,999.00	3,355,666.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/12/2007	2	Superior Diamonds Inc. - Common Shares	38,000.00	100,000.00
09/18/2007	21	TD Capital Mezzanine Partners III L.P. - Limited Partnership Interest	58,540,000.00	N/A
09/21/2007	142	TLC Explorations Inc. - Units	1,147,962.50	2,295,925.00
08/29/2007	1	Trez Capital Corporation - Mortgage	150,000.00	N/A
09/26/2007	1	True North Corporation - Debentures	207,693.00	1.00
10/04/2007	5	Unor Inc. - Flow-Through Shares	1,811,446.20	N/A
09/24/2007	1	Van Lee Limited Partnership - Loans	25,000.00	N/A
09/21/2007	74	Verb Exchange Inc. - Units	2,325,000.00	17,250,000.00
09/30/2007	72	Vertex Fund - Trust Units	6,961,690.00	N/A
09/30/2007	9	Vertex Managed Value Portfolio - Trust Units	1,873,116.10	N/A
09/28/2007	21	Viva Source Corp. - Warrants	319,000.00	797,500.00
08/09/2007	33	Waratah Coal Inc. - Units	8,000,000.00	5,000,000.00
10/05/2007	2	Wimberly Apartments Limited Partnership - Units	149,269.56	217,238.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Automodular Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
$12,000,000.00 -6,000,000 Common Shares Price: $2.00 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Capital Corporation
Promoter(s):
-
Project #1169464

Issuer Name:
Canadian Apartment Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 23, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
$99,777,500.00 - 5,350,000 Units Price: $18.65 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
CIBC World Markets Inc.
Promoter(s):
-
Project #1171010

Issuer Name:
Canadian Revolving Auto Floorplan Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
(1) $* - Floating Rate Dealer Floorplan Receivables-Backed Notes, Series 2007-D1 - Expected Final Payment Date of *; (2) $* - *% Dealer Floorplan Receivables-Backed Notes, Series 2007-D2 Expected Final Payment Date of *; (3) $* - *% Dealer Floorplan Receivables-Backed Notes, Series 2007-D3 Expected Final Payment Date of *
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Promoter(s):
DaimlerChrysler Financial Services Canada Inc.
Project #1170020

Issuer Name:
Copper Reef Mining Corporation
Principal Regulator - Manitoba
Type and Date:
Preliminary Prospectus dated October 12, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
A Maximum of 9,090,910 Flow-Through Shares at a price of Cdn $0.33 per Flow-Through Share ($3,000,000.30) and a Minimum of 4,545,455 Flow-Through Shares ($1,500,000.15) - and - A Maximum of 2,666,667 Units at a price of Cdn $0.30 per Unit ($800,000.10) and a Minimum of 2,000,000 Units ($600,000.00)
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
Promoter(s):
-
Project #1168337

Issuer Name:
Covenant Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Cdn$800,000.00 - 4,000,000 Common Shares PRICE : $0.2 0 per Share
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
M. Douglas Walker
Christopher Gulka
J. Greg Dawson
Project #1165520

Issuer Name:
Creststreet Alternative Energy Class
Creststreet Resource Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 22, 2007
Offering Price and Description:
Series A , Series B Shares and 2008 Series Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Creststreet Asset Management Limited
Project #1170070

Issuer Name:
Etruscan Resources Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated October 18, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1169644

Issuer Name:
Etruscan Resources Inc.
Principal Regulator - Nova Scotia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
$35,100,000.00 - 11,700,000 Units Price: $3.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1169644

Issuer Name:
Excel China Fund
Excel Chindia Fund
Excel Emerging Europe Fund
Excel Growth & Income Fund
Excel India Fund
Excel Money Market Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 18, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Series A, F and O Units
Underwriter(s) or Distributor(s):
Excel Funds Management Inc.
Promoter(s):
Excel Funds Management Inc.
Project #1169747

Issuer Name:
Franco-Nevada Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 23, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
Cdn$ * - * Common SharesPrice: Cdn$ * per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
UBS Securities Canada Inc.
Promoter(s):
Newmont Mining Corporation
Project #1171016

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Shelf Prospectus dated October 18, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
Up to $3,000,000,000.00 - Credit Card Asset-Backed Notes
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
TD Securities Inc.
Promoter(s):
-
Project #1169551

Issuer Name:
Global 45 Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Offering of Rights to Subscribe for up to 468,665 Units, each Unit consisting of one Class A Share and one Preferred Share Subscription Price: Three Rights and $ * per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1170125

Issuer Name:
Green Park Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
$300,000.00 -3,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywod Securities Inc.
Promoter(s):
Anthony Dutton
Project #1170231

Issuer Name:
ING DIRECT Streetwise Balanced Class
ING DIRECT Streetwise Balanced Growth Class
ING DIRECT Streetwise Balanced Income Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 19, 2007
Mutual Reliance Review System Receipt dated October 22, 2007
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Ing Direct Funds Limited
ING Direct Funds Limited
Promoter(s):
Ing Asset Management Limited
Project #1170221

Issuer Name:
Inhance Bond Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectus dated October 12, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
Class A, F and O Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1168987

Issuer Name:
International Datacasting Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 23, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
MGI Securities Inc.
Promoter(s):
-
Project #1170879

Issuer Name:
International Royalty Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
$63,000,000.00 -10,000,000 Common Shares Price: $6.30 per Common share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Haywood Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1170015

Issuer Name:
Jov Prosperity Canadian Equity Fund
Jov Prosperity Canadian Fixed Income Fund
Jov Prosperity International Equity Fund
Jov Prosperity U.S. Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 16, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
T.E. Investment Counsel Inc.
MGI Securities Inc.
Promoter(s):
-
Project #1169293

Issuer Name:
Omega Consensus American Equity Fund
Omega Consensus International Equity Fund
Omega High Dividend Fund
Omega Preferred Equity Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectuses dated October 17, 2007
Mutual Reliance Review System Receipt dated October 22, 2007
Offering Price and Description:
Advisor and O Series Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
National Bank Securities Inc.
Project #1170204

Issuer Name:
SonnenEnergy Corp.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated October 18, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
$6,000,000.00 to $12,000,000.00 - 12,000,000 to 24,000,000 Units each Unit consisting of one Common Share and one Warrant Price: $0.50 per Unit
Underwriter(s) or Distributor(s):
M Partners Inc.
Promoter(s):
Hans Hager
Christian Reinert
Project #1126195

Issuer Name:
York Ridge Lifetech Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 19, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
$200,000.00 - 1,000,000 Common Shares at a price of $0.20 per Common Share;
Agent's Option to acquire:
100,000 Common Shares at a price of $0.20 per Common Share
Directors' and Officers' Options to acquire:
285,000 Common Shares at a price of $0.20 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Mark Lawrence
Project #1170042

Issuer Name:
Zazu Metals Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 17, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Dundee Securities Corporation
Paradigm Capital Inc.
Cormark Securities Inc.
Promoter(s):
Gil Atzmom
Project #1169461

Issuer Name:
Mutual Fund Series, Series D, Series F and Series O of :
AGF Canadian High Yield Bond Fund
Mutual Fund Series, Series D, Series F, Series O, Series T and Series V of :
AGF Canadian Stock Fund
AGF Canada Class
AGF Canadian Resources Fund Limited
AGF Precious Metals Fund
AGF Aggressive Global Stock Fund
Principal Regulator - Ontario
Type and Date:
- Amendment No. 4 dated October 15th, 2007 to the Simplified Prospectus dated April 20th, 2007 for the AGF Canadian High Yield Bond Fund ; and
- Amendment No. 4 dated October 15th, 2007 to the Annual Information Forms dated April 20th, 2007 for the AGF Canadian Stock Fund , AGF Canada Class, AGF Canadian Resources Fund Limited, AGF Precious Metals Fund and AGF Aggressive Global Stock Fund

Mutual Reliance Review System Receipt dated October 22, 2007
Offering Price and Description:
Mutual Fund Series, Series D, Series F, Series O, Series T and Series V @ Net Asset Value
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1066188

Issuer Name:
Ambrilia Biopharma Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated October 22, 2007
Mutual Reliance Review System Receipt dated October 22, 2007
Offering Price and Description:
$15,562,500.00 - 12,450,000 Units Price: $1.25 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Dundee Securities Corporation
Loewen, Ondaatje, McCutcheon Limited
Promoter(s):
-
Project #1158955

Issuer Name:
Dynacor Gold Mines Inc.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated October 17, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
$4,000,000.00 - 10,000,000 Common Shares and 5,000,000 Common Share Purchase Warrants Issuable on Exercise or Deemed Exercise of 10,000,000 Previously Issued Special Warrants
Underwriter(s) or Distributor(s):
D&D Securities Company
Laurentian Bank Securities Inc.
Promoter(s):
Jean Martineau
Project #1144115

Issuer Name:
Enablence Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 18, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Up to $50,000,085.00 - Up to 37,037,100 Common Shares
Price: $1.35 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Promoter(s):
Arvind Chhatbar
Project #1096236

Issuer Name:
EnerVest FTS Limited Partnership 2007 II
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated October 17, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
Maximum 600,000 Limited Partnership Units ($15,000,000.00) @ $25.00 per Unit
Minimum 200,000 Limited Partnership Units ($5,000,000.00) @ $25.00 per Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
CIBC World Markets Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
Richardson Partners Financial Limited
Raymond James Ltd.
Promoter(s):
EnerVest 2007 II General Partner Corp.
Enervest Management Ltd.
Project #1161833

Issuer Name:
Class A Units and Class F Units (unless otherwise indicated) of:
Horizons BetaPro S&P/TSX 60® Bull Plus Fund
Horizons BetaPro S&P/TSX 60® Bear Plus Fund
Horizons BetaPro NASDAQ -100® Bull Plus Fund
Horizons BetaPro NASDAQ -100® Bear Plus Fund
Horizons BetaPro Canadian Bond Bull Plus Fund
Horizons BetaPro Canadian Bond Bear Plus Fund
Horizons BetaPro U.S. Dollar Bull Plus Fund
Horizons BetaPro U.S. Dollar Bear Plus Fund
Horizons BetaPro NYMEX® Oil Bull Plus Fund
(formerly Horizons BetaPro Crude Oil Bull Plus Fund) (also offering Series I Units)
Horizons BetaPro NYMEX® Oil Bear Plus Fund
(formerly Horizons BetaPro Crude Oil Bear Plus Fund) (also offering Series I Units)
Horizons BetaPro S&P 500® Bull Plus Fund
Horizons BetaPro S&P 500® Bear Plus Fund
Horizons BetaPro COMEX® Gold Bull Plus Fund
(formerly Horizons BetaPro Gold Bull Plus Fund) (also offering Series I Units)
Horizons BetaPro COMEX® Gold Bear Plus Fund
(formerly Horizons BetaPro Gold Bear Plus Fund) (also offering Series I Units)
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 5, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1153010

Issuer Name:
Lands End Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated October 17, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Minimum Offering: 1,500,000 Common Shares ($300,000.00); Maximum Offering: 2,500,000 Common Shares ($500,000.00) Price: $0.20 Per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Robert Pek
J. Arthur Bray
Project #1148410

Issuer Name:
North American Palladium Ltd.
Type and Date:
Final Short Form Base Shelf Prospectus dated October 22, 2007
Receipted on October 23, 2007
Offering Price and Description:
229,828 COMMON SHARES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1165686

Issuer Name:
RBC Private O'Shaughnessy Canadian Equity Pool
RBC Private O'Shaughnessy U .S. Value Equity Pool
RBC Private O'Shaughnessy U .S. Growth Equity Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 10, 2007 to the Simplified Prospectuses and Annual Information Forms dated August 24, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Asset Management Inc.
RBC Asset Management Inc.
The Royal Trust Company
Promoter(s):
RBC Asset Management Inc.
Project #1130122

Issuer Name:
RBC $U.S. Money Market Fund (Series A units only)
RBC Global High Yield Fund (Series A and Advisor Series units)
RBC Canadian Short-Term Income Fund (Series A and Advisor Series units)
RBC Bond Fund (Series A and Advisor Series units)
RBC Cash Flow Portfolio (Series A and Advisor Series units)
RBC Enhanced Cash Flow Portfolio (Series A and Advisor Series units)
RBC Select Conservative Portfolio (Series A and Advisor Series units)
RBC Select Balanced Portfolio (Series A and Advisor Series units)
RBC Select Growth Portfolio (Series A and Advisor Series units)
RBC Select Aggressive Growth Portfolio (Series A and Advisor Series units)
RBC Select Choices Conservative Portfolio (Series A and Advisor Series units)
RBC Select Choices Balanced Portfolio (Series A and Advisor Series units)
RBC Select Choices Growth Portfolio (Series A and Advisor Series units)
RBC Select Choices Aggressive Growth Portfolio (Series A and Advisor Series units)
RBC Target 2010 Education Fund (Series A units only)
RBC Target 2015 Education Fund (Series A units only)
RBC Target 2020 Education Fund (Series A units only)
RBC Target 2025 Education Fund (Series A units only)
RBC O'Shaughnessy Canadian Equity Fund (Series A, Advisor Series, Series D and Series F units)
RBC O'Shaughnessy All-Canadian Equity Fund (Series A, Advisor Series, Series D and Series F units)
RBC O'Shaughnessy U.S. Value Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)
RBC O'Shaughnessy U.S. Growth Fund (Series A, Series D, Series F and Series O units)
RBC O'Shaughnessy International Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)
RBC O'Shaughnessy Global Equity Fund (Series A, Advisor Series, Series D, Series F and Series O units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 10, 2007 to the Simplified Prospectuses and Annual Information Forms dated July 3, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
RBC Asset Management Inc.
Promoter(s):
Project #1108387

Issuer Name:
Red Back Mining Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 23, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
Cdn$110,003,520.00 - 16,667,200 Common Shares Price: Cdn$6.60 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
GMP Securities L.P.
Cormark Securities Inc.
Promoter(s):
-
Project #1168278

Issuer Name:
Redline Communications Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 18, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
CDN$40,007,500.00 - 6,155,000 Common Shares Price: CDN$6.50 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
GMP Securities L.P.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1160818

Issuer Name:
ROI Canadian Retirement Fund (formerly ROI Sceptre Canadian Pension Fund)
(Series A Units, Series F Units, Series F-5 Units, Series F-7 Units, Series O Units,
Series 5 Units and Series 7 Units)
ROI Global Retirement Fund (formerly ROI Global Pension Fund)
(Series A Units, Series F Units, Series F-5 Units, Series F-7 Units, Series F-9 Units,
Series O Units, Series 5 Units, Series 7 Units and Series 9 Units)
ROI Sceptre Retirement Growth Fund
(Series A Units, Series C-7 Units, Series F Units, Series F-7 Units, Series F-9 Units
Series O Units, Series 7 Units and Series 9 Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated October 3, 2007
Mutual Reliance Review System Receipt dated October 18, 2007
Offering Price and Description:
Series A Units, Series F Units, Series F-5 Units, Series C-7 Units, Series F-7 Units, Series F-9 Units, Series O Units, Series 5 Units, Series 7 Units and Series 9 Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Return on Innovation Management Ltd.
Project #1158893

Issuer Name:
Sentry Select Diversified Income Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 16, 2007
Mutual Reliance Review System Receipt dated October 17, 2007
Offering Price and Description:
Maximum - $517,000,001.00 (108,908,597) Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Promoter(s):
-
Project #1159310

Issuer Name:
Skye Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 22, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
$65,340,000.00 - 5,400,000 Units, each comprised of one common share and one-half of one common share purchase warrant Price: $12.10 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
UBS Securities Canada Inc.
Merrill Lynch Canada Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Scotia Capital Inc.
Orion Securities Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1168068

Issuer Name:
Taseko Mines Limited
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 23, 2007
Mutual Reliance Review System Receipt dated October 23, 2007
Offering Price and Description:
$37,000,002.00 - 7,115,385 Common Shares Price: $5.20 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Canccord Capital Corporation
Paradigm Capital Inc.
Promoter(s):
-
Project #1168446

Issuer Name:
USC Family Group Education Savings Plan
USC Family Single Student Education Savings Plan
USC Family Multiple Student Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 11, 2007
Mutual Reliance Review System Receipt dated October 19, 2007
Offering Price and Description:
Scholarship plan units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
The International Scholarship Foundation
Project #1107632/1107633/1107635

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: The Jitney Group Inc. To: JitneyTrade Inc.	Investment Dealer and Futures Commission Merchant	July 17, 2007
Name Change	From: Scivest Alternative Strategies Inc. To: Ark Fund Management Ltd.	Limited Market Dealer	October 10, 2007
New Registration	DAV/Wetherly Financial, L.P.	Limited Market Dealer	October 11, 2007
Consent to Suspension (Rule 33-501 - Surrender of Registration)	Asset Management (Bermuda) Ltd.	Non-Canadian Adviser (Investment Counsel & Portfolio Manager)	October 17, 2007
New Registration	Newton Capital Management Limited	International Adviser (Investment Counsel and Portfolio Manager)	October 19, 2007
New Registration	Lockwood Capital Management, Inc.	International Adviser (Investment Counsel and Portfolio Manager)	October 19, 2007
New Registration	RBC Securities Australia Pty Limited	International Dealer	October 22, 2007
New Registration	Nalbandian Asset Management Corp.	Limited Market Dealer & Investment Counsel & Portfolio Manager & Commodity Trading Manager	October 24, 2007

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Pacific Regional Council Hearing Panel Makes Findings Against Ravi Puri

NEWS RELEASE
For immediate release

MFDA PACIFIC REGIONAL COUNCIL HEARING PANEL
MAKES FINDINGS AGAINST RAVI PURI

October 22, 2007 (Vancouver, British Columbia) – A disciplinary hearing in the Matter of Ravi Puri was held today before a Hearing Panel of the Pacific Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in Vancouver, British Columbia.

The Hearing Panel made the following orders at the conclusion of the hearing and advised that it would issue written reasons for its decision in due course:

- A permanent prohibition on Mr. Puri from conducting securities-related business in any capacity,
- A fine in the amount of $50,000 for failing to cooperate with an MFDA investigation,
- A fine in the amount of $500,000 for failing to deal with clients fairly, honestly and in good faith, and
- Costs in the amount of $10,000.

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

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 162 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

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

13.1.2 MFDA Hearing Panel Rejects Settlement Agreement with Berkshire Investment Group Inc. in Relation to Ian Gregory Thow

NEWS RELEASE
For immediate release

MFDA HEARING PANEL REJECTS SETTLEMENT AGREEMENT
WITH BERKSHIRE INVESTMENT GROUP INC.
IN RELATION TO IAN GREGORY THOW

October 22, 2007 (Vancouver, British Columbia) – A Settlement Hearing in the matter of Berkshire Investment Group Inc. was held today before a Hearing Panel of the Pacific Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA").

The hearing was convened to consider whether to approve a Settlement Agreement between the MFDA and Berkshire concerning allegations that Berkshire failed to conduct reasonable supervisory investigations of the activities of former Approved Person, Ian Gregory Thow and to take such reasonable supervisory and disciplinary measures as would be warranted by the results of its investigations, contrary to MFDA Rules 2.5.1, 2.1.1(c) and the public interest.

The Hearing Panel declined to approve the Settlement Agreement and made no Order in the matter. The Settlement Agreement hearing is concluded and the decision of the Hearing Panel is not subject to appeal. The MFDA and Berkshire may attempt to reach a different settlement or the MFDA may issue a Notice of Hearing under sections 20 and 24 of MFDA By-law No. 1 in respect of the events that were the subject of the Settlement Hearing.

The British Columbia Securities Commission conducted enforcement proceedings against Thow, and recently found him that he had failed to deal fairly, honestly and in good faith with clients, made misrepresentations and perpetrated a fraud. The Commission described Thow's activities as "one of the most callous and audacious frauds this province has seen". The Commission's decision is available on its website, www.bcsc.bc.ca.

Thow is also the subject of a criminal investigation by the Vancouver Integrated Market Enforcement Team of the Royal Canadian Mounted Police.

MFDA disciplinary panels have the power to terminate or suspend membership, levy fines and impose terms and conditions on membership. MFDA disciplinary panels, like many securities regulatory organizations, do not have the power to award compensation. Clients who are not satisfied with Berkshire's response to their complaint have two options. They can:

- Bring their complaint to the Ombudsman for Banking Services and Investments for review. OBSI is a free, independent service for resolving investment disputes. OBSI can recommend compensation of up to $350,000.
- Commence a civil action before the courts to pursue financial recovery in any amount.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 162 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

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

13.1.3 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Trade Tolerance Procedures

CDS Clearing and Depository Services Inc. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

TRADE TOLERANCE PROCEDURES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments address a request from the CDS Strategic Development Review Committee for the implementation of a tolerance level on the Exchange Trade reconciliation process to exclude small break differences. The proposed amendments are intended to facilitate a more efficient overall reconciliation process. CDSX® Participants will, on the implementation of the proposed amendments, be able to determine their own tolerance level (greater than or equal to zero), which will be maintained in a sub participant cross reference table. The tolerance will apply exclusively to the primary reconciliation report and any sub-participant reconciliation reports.

By adding two new screens (inquire and maintain domestic exchange trade attributes) under the Trade function, Participants will have the ability to enter their required tolerance level. This tolerance level will be identical across all exchanges. In addition, participants will be given the ability to inquire on, and maintain, their sub-participant details on these new screens.

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 the CDS User Guides entitled *Trade and Settlement Procedures* and *CDS Reporting Procedures* are as follows:

- The addition of two new Trade Functions to *Trade and Settlement Procedures*: “Maintain Domestic Trade Reconciliation Details” and “Inquire Domestic Trade Reconciliation Details”; these two Trade Function allow Participants to add or modify a trade tolerance level and sub-participant details as well as inquire on those tolerance levels and details.

- The addition of section 3.4.1 to *Trade and Settlement Procedures*; this section outlines how Participants add, modify, or inquire into trade reconciliation tolerances and sub-participant details.

- The clarification at section 23.8 of *CDS Reporting Procedures* noting that the Trade Reconciliation Report will provide details only above and beyond the tolerance level as determined 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 **November 5, 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 Notice and Request for Comment – Material Amendments to CDS Procedures Relating to Tax Breakdown Service Procedures

CDS Clearing and Depository Services Inc. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

TAX BREAKDOWN SERVICE PROCEDURES

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

The proposed amendments to CDS Participant Procedures introduce a new service to be offered to Participants under the auspices of CDS. The proposed amendments to CDS Participant Procedures include a product description of the mutual fund and limited partnership tax breakdown service ("TBS"), the type of data that the service will provide, and the several ways in which that information can be obtained.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The TBS was developed by The Canadian Depository for Securities Limited at the request of the Investment Dealers Association of Canada (the "IDA" - as it was then known) and, since the re-organization of the CDS group of companies, has been offered as a free service to the public and to Participants by CDS's affiliate, CDS Innovations Inc.

The service has, to-date, been based on the voluntary submission and filing of T3 and T5 taxation information by issuers. The issuers submit the required information via a spreadsheet form provided in the website interface. Neither CDS nor CDS Innovations Inc. has taken responsibility for the information provided by the issuers on the website, and neither CDS nor CDS Innovations Inc. has undertaken to validate either the identity of the person or organization submitting the information or the accuracy of the information itself.

In 2005, CDS received a request from the Investment Industry Association of Canada (the industry association segment of the organization previously known as the IDA) asking that CDS assume responsibility for the TBS website and asking that CDS maintain the information on behalf of its Participants and the marketplace. In 2006 the IIAC renewed its request for upgrades and improvements to the TBS website.

In 2007, the federal government introduced amendments to the Income Tax Act and the Income Tax Regulations that will *mandate* that issuers disclose the information previously provided by issuers on a voluntary basis. CDS Innovations Inc. will continue to operate the TBS website as a free public service.

The proposed amendments to CDS Procedures, however, permit CDS Participants to subscribe for the provision of consolidated files and/or updates and notifications to the information contained in that file. This enhanced subscription service will be provided to Participants by CDS.

C. IMPACT OF THE PROPOSED AMENDMENTS

A significant part of CDS's core services to its Participants is the provision of a wide variety of marketplace information that is either a product of its clearing, settlement and depository services (CDSX), or is collected and collated for and provided to its Participants. The TBS will provide a further subscription option for Participants wishing to use collected information. As the information is not of a transactional nature, but is rather collected from third party issuers in order to disseminate the taxation status of securities issues, CDS foresees no direct impact to itself or to its risk profile.

C.1 Competition

CDS is uniquely positioned to provide the TBS to its Participants and other market participants. The service will be provided to all CDS Participants on a subscription basis.

C.2 Risks and Compliance Costs

The development of and updates to the TBS was undertaken at the request of Participants and is intended to reduce both the risks and costs associated with Participants taxation filing obligations. There are no compliance issues for Participants vis-à-vis CDS in regard to the TBS.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

As the proposed service is informational in nature rather than transactional, comparison to international standards is not warranted.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

The TBS, and the proposed amendments to CDS participant procedures, were developed at the behest of, and on behalf of, CDS Participants who require the information for taxation filing purposes.

D.2 Procedure Drafting Process

CDS Procedure amendments are developed by CDS personnel (and in cooperation and consultation with its Participants where required) and are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC").

D.3 Issues Considered

In developing the service, CDS, in consultation with its Participants, considered the nature of the information to be provided, the currency of information to be maintained (i.e., how often the information could or should be updated), and the ability of CDS and its affiliates to provide the information to both its Participants and non-participants via the various communications and transmission facilities available.

D.4 Consultation

CDS personnel consulted with the Entitlements Subcommittee of the SDRC as well as with the subcommittee on client tax of the Investment Industry Association of Canada.

D.5 Alternatives Considered

The TBS is a new service to be offered by CDS; no alternatives currently exist for the centralized provision of such information for Canadian securities issues. In the absence of the proposed service, Participants are required to collect and collate this information themselves.

The existing alternative to a centralized source of dividend eligibility information is for CDS Participants, and other market participants, to make their own determinations with respect to the eligibility of dividends received for preferential tax treatment. This alternative was rejected in favour of the proposed service, which was considered more efficient.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

CDS intends to make the TBS available to its Participants as of **7 January, 2008** in order to provide them with up-to-date dividend eligibility information for the 2007 taxation year.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDS already provides numerous files to its Participants in the context of its Batch and Interactive Service. No technological systems changes will be required.

E.2 CDS Participants

The TBS is intended to simplify and streamline the collection of the taxation status of Canadian securities. Participants are already required to collate this information and manipulate it as part of their filing obligations for each taxation year. No technological changes to Participant systems or to their data provision arrangements with CDS in order to access the information.

E.3 Other Market Participants

Market participants who are *not* CDS Participants will continue to be able to access the information via a free online service currently offered by CDS affiliate CDS Innovations Inc. The free online service provides dividend eligibility information for individual issues. Non-Participants will also now be able to subscribe to the TBS via CDS Innovations Inc. to receive the archive file, the monthly file, and/or email notifications.

F. COMPARISON TO OTHER CLEARING AGENCIES

No service comparison is possible, as the proposed service is unique to the Canadian capital marketplace.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and delivered by **November 26, 2007** to:

Tony Hoffmann
Legal Counsel
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

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

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^e^ Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22nd floor
PO box 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Fax: (514) 873-7455
e-mail: consultation-en-cours@lautorite.qc.ca

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

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

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

I. PROPOSED PROCEDURE AMENDMENTS

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

JAMIE ANDERSON
Managing Director, Legal

APPENDIX "A"

PROPOSED PROCEDURE AMENDMENT

Text of CDS Participant Procedures marked to reflect proposed amendments	Text CDS Participant Procedures reflecting the adoption of proposed amendments
6. 21 - Mutual Fund and Limited Partnership Tax Breakdown Service	**6. 21 - Mutual Fund and Limited Partnership Tax Breakdown Service**
The Mutual Fund and Limited Partnership Tax Breakdown Service provides tax breakdown information on distributions made by mutual fund trusts, mutual fund corporations and limited partnerships (reported on T3, T5 and T5013 information slips respectively). The tax breakdown information includes reporting dividend payments eligible for favourable tax treatment (according to Canadian tax legislation) as of January 2007.	The Mutual Fund and Limited Partnership Tax Breakdown Service provides tax breakdown information on distributions made by mutual fund trusts, mutual fund corporations and limited partnerships (reported on T3, T5 and T5013 information slips respectively). The tax breakdown information includes reporting dividend payments eligible for favourable tax treatment (according to Canadian tax legislation) as of January 2007.
Note: CDS is only responsible for compiling the information provided by issuers. The information provided through this service is not intended to be used as tax advice by participants or their clients.	**Note:** CDS is only responsible for compiling the information provided by issuers. The information provided through this service is not intended to be used as tax advice by participants or their clients.
The tax breakdown information available through this service applies to distributions on CDSX eligible and CDSX non-eligible Canadian issues for each taxation year.	The tax breakdown information available through this service applies to distributions on CDSX eligible and CDSX non-eligible Canadian issues for each taxation year.
Participants have the following paid and free service options for accessing the information available through this service:	Participants have the following paid and free service options for accessing the information available through this service:
• Mutual fund trust, mutual fund corporation, limited partnership archive file (paid service) – Participants can subscribe to a consolidated file containing all tax breakdown details on distributions made within a specific taxation year.	• Mutual fund trust, mutual fund corporation, limited partnership archive file (paid service) – Participants can subscribe to a consolidated file containing all tax breakdown details on distributions made within a specific taxation year.
• Mutual fund trust, mutual fund corporation, limited partnership daily file (paid service) – Participants can subscribe to a daily incremental file containing tax breakdown details on distributions made within a specific taxation year.	• Mutual fund trust, mutual fund corporation, limited partnership daily file (paid service) – Participants can subscribe to a daily incremental file containing tax breakdown details on distributions made within a specific taxation year.
• E-mail notification (paid service) – Participants can subscribe to an e-mail notification service that reports only replacement records made from January 1 to April 30. Each replacement record contains tax breakdown details on distributions made within a specific taxation year.	• E-mail notification (paid service) – Participants can subscribe to an e-mail notification service that reports only replacement records made from January 1 to April 30. Each replacement record contains tax breakdown details on distributions made within a specific taxation year.
• Online web-based query (free service) – Participants can view mutual fund trust, mutual fund corporation and limited partnership tax breakdown information for individual issues on the CDS website (www.cdsinnovations.ca).	• Online web-based query (free service) – Participants can view mutual fund trust, mutual fund corporation and limited partnership tax breakdown information for individual issues on the CDS website (www.cdsinnovations.ca).
Note: The paid services are charged annually per participating CUID.	**Note:** The paid services are charged annually per participating CUID.
For more information on the files, refer to the Mutual fund trust, mutual fund corporation, limited partnership archive file and Mutual fund trust, mutual fund corporation, limited partnership daily file in *CDS Batch and Interactive Services – Technical Information.*	For more information on the files, refer to the Mutual fund trust, mutual fund corporation, limited partnership archive file and Mutual fund trust, mutual fund corporation, limited partnership daily file in *CDS Batch and Interactive Services – Technical Information.*
Participants may subscribe to this service by completing the Data Transmission Request form (CDSX218).	Participants may subscribe to this service by completing the Data Transmission Request form (CDSX218).

13.1.5 CDS Notice and Request for Comments – Material Amendments to CDS Procedures Relating to Dividend Eligibility Reporting Service Procedures

CDS Clearing and Depository Services Inc. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

DIVIDEND ELIGIBILITY REPORTING SERVICE PROCEDURES

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

The proposed amendments to CDS Participant Procedures introduce a new service – the Dividend Eligibility Reporting Service ("DERS") to be offered to Participants. The proposed amendments to CDS Participant Procedures include a product description, the type of data that the service will provide, and the several ways in which that information can be obtained.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

In 2007 the Government of Canada introduced legislation that resulted in favourable tax treatment being afforded to investors under certain circumstances based on the type of dividends paid by Canadian corporations, mutual fund trusts, and partnerships. The legislation requires Canadian corporations, mutual fund trusts and partnerships to classify dividends as eligible or non-eligible. Dividend classifications will be reported accordingly on T3, T5 or T5013 information slips issued to investors.

The DERS provides CDS participants with information required to identify dividends received from a Canadian source that are eligible for favourable tax treatment, based on the aforementioned taxation changes.

The service was developed to provide CDS's Participants with a central point of reference to facilitate the preparation of tax information slips for their clients. The service applies to dividend payments on CDSX® and non-CDSX eligible Canadian issues for each tax year as of January 1, 2007.

The Dividend Eligibility Reporting Service:

- Provides dividend eligibility data in a file format that will allow participants to produce T3 and T5 information slips to their clients with accurate information.

- Includes an option for yearly archive data that will allow participants to inquire about past years.

- Includes an option to receive an e-mail file on changes or updates from issuers.

C. IMPACT OF THE PROPOSED AMENDMENTS

A significant part of CDS's core services to its Participants is the provision of a wide variety of marketplace information that is either a product of its clearing, settlement and depository services (CDSX), or is collected and collated for and provided to its Participants. The DERS will provide a further subscription option for Participants wishing to use collected information. As the information is not of a transactional nature, but is rather collected from third party issuers in order to disseminate the taxation status of securities issues, CDS foresees no direct impact to itself or to its risk profile.

The DERS will afford CDS's Participants the following benefits, among others:

- Investors will benefit from favourable tax treatment based on participant's ability to report on accurately T3 or T5 forms, respectively.

- Participants will not need to develop processes or systems to collect eligibility data directly from issuers.

- Participants will receive data files based on their existing infrastructure arrangement with CDS.

C.1 Competition

The service will be provided to all CDS Participants on a subscription basis.

C.2 Risks and Compliance Costs

The development of the DERS was undertaken at the request of Participants and is intended to reduce both the risks and costs associated with Participants taxation filing obligations. There are no compliance issues for Participants vis-à-vis CDS in regard to the DERS.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

As the proposed service is informational in nature rather than transactional, comparison to international standards is not warranted.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

The DERS was developed at the behest of, and on behalf of, CDS Participants, who require the information for taxation filing purposes.

D.2 Procedure Drafting Process

The DERS procedure amendments were developed by CDS personnel (and in cooperation and consultation with its Participants where required) and are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The service description comprising the substance of the proposed amendments was developed by CDS product development staff.

D.3 Issues Considered

In developing the service CDS, in consultation with its Participants, considered the nature of the information to be provided, the scope of information to be maintained (i.e., how often the information could or should be updated), and the ability of CDS and its affiliates to provide the information to its Participants via the various communications and transmission facilities available.

D.4 Consultation

CDS personnel consulted with the Entitlements Subcommittee of the SDRC as well as with the subcommittee on client tax of the Investment Industry Association of Canada.

D.5 Alternatives Considered

The DERS is a new service to be offered by CDS; no alternatives currently exist for the centralized provision of dividend eligibility for Canadian securities issues. In the absence of the DERS, Participants are required to collect and collate this information themselves.

The existing alternative to a centralized source of dividend eligibility information is for CDS Participants, and other market participants, to make their own determinations with respect to the eligibility of dividends received for preferential tax treatment. This alternative was rejected in favour of the proposed service, which was considered more efficient.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

CDS proposes to make the DERS available to its Participants as of **2 January, 2008** in order to provide them with up-to-date dividend eligibility information for the 2007 taxation year.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDS already provides numerous files to its Participants in the context of its Batch and Interactive Service. No technological systems changes will be required.

E.2 CDS Participants

The DERS is intended to simplify and streamline the collection of the taxation status of Canadian securities. Participants are already required to collate this information and manipulate it as part of their filing obligations for each taxation year. No technological changes to Participant systems or to their data provision arrangements with CDS in order to access the information.

E.3 Other Market Participants

Market participants who are *not* CDS Participants will be able to access the information via a free online service offered by CDS affiliate CDS Innovations Inc. The free online service will provide dividend eligibility information for individual issues. Non-Participants will also be able to subscribe to the DERS via CDS Innovations Inc. to receive the archive file, the monthly file, and/or email notifications.

F. COMPARISON TO OTHER CLEARING AGENCIES

No service comparison is possible, as the proposed service is unique to the Canadian capital marketplace.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and delivered by **November 26, 2007** to:

Tony Hoffmann
Legal Counsel
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

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

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^e^ Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22nd floor
PO box 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Fax: (514) 873-7455
e-mail: consultation-en-cours@lautorite.qc.ca

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

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

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

I. PROPOSED PROCEDURE AMENDMENTS

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

JAMIE ANDERSON
Managing Director, Legal

APPENDIX "A"

PROPOSED PROCEDURE AMENDMENT

Text of CDS Participant Procedures marked to reflect proposed amendments	Text CDS Participant Procedures reflecting the adoption of proposed amendments
6.11 Dividend Eligibility Reporting Service The Dividend Eligibility Reporting Service provides information on dividend eligibility designations of Canadian corporations to CDS participants. These designations determine if dividends paid by Canadian corporations (according to Canadian tax legislation) are eligible for favourable tax treatment. Note: CDS is only responsible for compiling the eligibility information provided by issuers. The information provided through this service is not intended to be used as tax advice by participants or their clients. The eligibility information available through this service applies to dividend payments made on CDSX eligible and CDSX non-eligible Canadian issues for each taxation year as of January 1, 2007. Participants have the following paid and free service options for accessing the information available through this service: • Dividend eligibility archive file (paid service) – Participants can subscribe to a consolidated file containing all dividend eligibility information for a specific taxation year. • Dividend eligibility monthly file (paid service) – Participants can subscribe to a file containing cumulative eligibility information on dividends declared in the current taxation year, up to the end of the previous month. • E-mail notification (paid service) – Participants can subscribe to an e-mail notification service containing additions and changes made from January 1 to January 31, for dividend payments that were payable in the previous taxation year. • Online web-based query (free service) – Participants can view dividend eligibility information for individual issues on the CDS website (www.cdsinnovations.ca). Note: The paid services are charged annually per participating CUID. For more information on the files, refer to the Dividend eligibility archive file and Dividend eligibility monthly file in *CDS Batch and Interactive Services – Technical Information.* Participants may subscribe to this service by completing the Data Transmission Request form (CDSX218).	**6.11 Dividend Eligibility Reporting Service** The Dividend Eligibility Reporting Service provides information on dividend eligibility designations of Canadian corporations to CDS participants. These designations determine if dividends paid by Canadian corporations (according to Canadian tax legislation) are eligible for favourable tax treatment. **Note:** CDS is only responsible for compiling the eligibility information provided by issuers. The information provided through this service is not intended to be used as tax advice by participants or their clients. The eligibility information available through this service applies to dividend payments made on CDSX eligible and CDSX non-eligible Canadian issues for each taxation year as of January 1, 2007. Participants have the following paid and free service options for accessing the information available through this service: • Dividend eligibility archive file (paid service) – Participants can subscribe to a consolidated file containing all dividend eligibility information for a specific taxation year. • Dividend eligibility monthly file (paid service) – Participants can subscribe to a file containing cumulative eligibility information on dividends declared in the current taxation year, up to the end of the previous month. • E-mail notification (paid service) – Participants can subscribe to an e-mail notification service containing additions and changes made from January 1 to January 31, for dividend payments that were payable in the previous taxation year. • Online web-based query (free service) – Participants can view dividend eligibility information for individual issues on the CDS website (www.cdsinnovations.ca). **Note:** The paid services are charged annually per participating CUID. For more information on the files, refer to the Dividend eligibility archive file and Dividend eligibility monthly file in *CDS Batch and Interactive Services – Technical Information.* Participants may subscribe to this service by completing the Data Transmission Request form (CDSX218).

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